

Appeal Decision

Site visit made on 7 August 2024

by S Rawle BA (Hons) Dip TP Solicitor

an Inspector appointed by the Secretary of State

Decision date: 6th September 2024

Appeal Ref: APP/D3125/W/24/3341580

**Land North of Boddington Lane near the junction of Church Road,
Wilcote Road and Boddington Road, North Leigh OX29 6QJ**

- 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 Mrs Karen Howe against the decision of West Oxfordshire District Council.
 - The application Ref is 23/02229/OUT.
 - The development proposed is for a self-build detached dwelling with garage, residential curtilage and ground mounted solar panels.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have removed the address from the description of development as that is fully set out in the main heading.
3. The planning application was submitted in outline with all matters reserved for future consideration. I have assessed the proposal on this basis and treated the drawings as illustrative.
4. At the application stage, the appellant did not submit a preliminary ecological assessment. Consequently, the Council were unable to assess what impact the proposal would have on biodiversity which led to a reason for refusal on that basis. However, during the appeal stage, the appellant has submitted relevant information which confirms that any impact on protected species would in general be low. On that basis, the Council has confirmed that their previous concerns have been addressed and if I was minded to allow the appeal this matter could be satisfactorily addressed by appropriately worded conditions. I agree and consequently this matter does not form a main issue and is a neutral factor in the determination of the appeal.

Main Issues

5. The main issues are:

- whether or not the appeal site is an appropriate location for the proposed development having regard to the development plan and national policies relating to development within the countryside;
- the effect of the proposal on the character and appearance of the area; and
- whether adequate information has been provided in relation to contamination.

Reasons

Whether or not an appropriate location

6. The appellant accepts that the appeal site is not located within the built-up area of North Leigh village. In fact, the appeal site is clearly separated from the village by some distance and although there is a scattering of other dwellings relatively nearby, the appeal site cannot be considered to form part of the village itself and is remote from both the village and from other places, buildings, and other dwellings. This is an issue I will return to.
7. Moreover, given the clear separation between the appeal site and the closest building along Church Road, which itself is separated from the core of the village, and the fact that there are intervening fields between that property and the appeal site, it cannot be considered to be adjoining the built-up area. As a result, the appeal site is located within an area categorised in the settlement hierarchy as open countryside.
8. Policy OS2 of the West Oxfordshire Local Plan 2031 (WOLP) adopted September 2018 sets out that in such an area development will be limited to that which requires and is appropriate for a rural location and respects the intrinsic character of the area and that proposals for residential development will be considered under Policy H2 of the WOLP.
9. Policy H2 of the WOLP sets out that new dwellings within an area categorised in the settlement hierarchy as open countryside will be limited to certain types of development none of which apply to the proposed development.
10. The appellant highlights that the appeal site is located within a sustainable location due to its location relative to services and facilities within the village and access to public transport.
11. Taking account of the available evidence and my own observations, North Leigh does have services and facilities adequate for day-to-day provision, including a shop and post office, nursery and primary school, pubs, village halls and playgrounds. However, they are located in the part of the village some considerable distance from the appeal site. That is the same for the nearest bus stop. The bus stop is about 1 km away and the primary school is about 1.3 km. In some circumstances that would be an acceptable distance. However, there is not a continuous paved footpath with lighting between the appeal site and the village and any journey on foot would be along an unlit narrow country lane.

12. I accept that cycling to the village would be more feasible, but nevertheless, given the location of the appeal site relative to the range of services and facilities available I consider that it is more likely than not that future occupiers of the proposed dwellings would be reliant on the private car to undertake many of the journeys necessary to access facilities and services.
13. I note that the dwelling would be designed for digital home working and the appellant would not have to travel to the small holding several times a day. However, the dwelling would be a permanent structure and how it would ultimately be used would be difficult to control.
14. As a result, notwithstanding that sustainable transport opportunities are likely to be more limited in rural areas such as this, the appeal site would not represent a location which is sustainable as contrary to the National Planning Policy Framework (the Framework) it would not be located where the need to travel would be limited. Further, the proposal would make only a very modest contribution to enhance or maintain the vitality of the rural community. This would be clearly outweighed by the fact that the proposal would not be located where the need to travel would be limited.
15. The appellant sets out that the proposal would not result in the development of an isolated home in the countryside. However, I do not agree. I have taken account of the relevant case law that has been brought to my attention¹. I accept that isolated is not defined in the Framework and in accordance with the relevant judgment, it should be given its ordinary objective meaning of far away from other places, buildings or people; remote.
16. Having considered the position on the ground, I consider that although there is a scattering of other buildings relatively nearby, with the exception of The Old School which is 300 metres from the appeal site, all the other buildings are also isolated as they are physically separate or remote from North Leigh. It follows that based on the situation on the ground in my judgement the proposal would result in an isolated home within the countryside and as it does not meet any of the circumstances listed, it would be at odds with the Framework.
17. Policy H5 of the WOLP deals with custom and self-build housing and among other things sets out that proposals for such development will be approved in suitable, sustainable locations subject to compliance with other relevant policies of WOLP, including OS2 and H2. Given my findings, the appeal site is not a suitable or sustainable location and is at odds with the other relevant development plan policies. As a result, development plan policies do not support residential development, including a self-build dwelling at the appeal site.
18. I therefore conclude that the proposed dwellinghouse would not be located in an appropriate location having regard to the settlement hierarchy and would not accord with development plan and national policies relating to development within the countryside. I afford this issue significant weight in the determination of the appeal.

¹ Braintree District Council v Secretary of State for Communities and Local Government, Greyread Limited and Granville Developments Limited [2017] EWHC 2743 (Admin)

19. The proposal would therefore conflict with Policies OS2, H2 and H5 of the WOLP which among other things seek to locate development in the right place, that provide safe and convenient pedestrian access to supporting services and facilities and are located in sustainable locations.
20. The proposal would also be at odds with the Framework as the proposal would not be located where the need to travel would be limited and would introduce an isolated home in the countryside.

Character and appearance

21. The appeal site is a particularly attractive open area of land comprising assorted vegetation including grassland, attractive wildflowers, saplings which is surrounded by more mature trees and woodland. As a result, it appears as an attractive verdant open area which has a sense of spaciousness which makes a significant contribution to the character and appearance of the area.
22. Although at this stage, any plans are illustrative, the proposal would result in the introduction of a detached dwelling, garage residential curtilage and ground solar panels. Notwithstanding that the appeal site is not located within the Green Belt, or designated as a National Landscape, such development, however designed and wherever sited on the appeal site would significantly diminish the sense of spaciousness which makes such an important contribution to the character and appearance of the area.
23. Moreover, it would introduce a significant amount of building onto the existing open area of land which would result in an unacceptable urbanising impact. The proposal would result in a discordant addition completely at odds with the prevailing character and appearance of the appeal site and the wider area.
24. The appellant acknowledges that views would be possible from Bodington Lane and from the public footpath, particularly during winter months although these would diminish over time due to the existing vegetation and planting. I have taken account of the fact that due to its location and the surrounding vegetation, public views of the appeal site would not be significant, particularly during the summer months. However, the lack of public views does not justify harmful urbanising development at the appeal site.
25. I have taken account of the proposed development at New Yatt Road which has been brought to my attention. Notwithstanding that ultimately the Council did not approve the scheme as acknowledged by the appellant, that site abuts a recently built development and has a materially different impact on its surroundings than the appeal proposal. Consequently, this example has very limited weight in the determination of the appeal.

26. I therefore conclude that the proposal would have an unacceptable impact on the character and appearance of the area, and I afford this harm significant weight. Consequently, the proposal would conflict with policies OS2 and EH2 of the WOLP which among other things seek to ensure that development should form a logical complement to the existing pattern of development and conserve and where possible enhance the area's intrinsic character and quality and distinctiveness of the local landscape.
27. The proposal also would not accord with the Framework which seeks to ensure development is sympathetic to local character.

Contamination

28. The Council highlight that available information suggests that the appeal site is located within the vicinity of a former quarry and landfill which received semi-inert, bio-degradable, radio-active and sterile animal vaccine. Given that a contaminated land desk study had not been undertaken, the Council considered insufficient information had been provided to satisfy them that the site would be suitable for residential development. They set out that given that this was a fundamental issue of human habitability this could not be dealt with by condition.
29. The appellant does not disagree that further work would be necessary, but considers that this matter could be dealt with by a pre-commencement condition.
30. I agree, as imposition of a suitably worded condition would ensure that any contamination would be appropriately dealt with. For example, such a condition would require that prior to commencement of any development an assessment of the risks posed by any contamination, carried out in accordance with the relevant British Standard would be submitted to and approved in writing by the local planning authority. If any contamination was found, no development would take place until the site had been appropriately remediated and a verification report had been submitted and again approved in writing by the local planning authority. Clearly, if the appeal site could not be appropriately remediated to the satisfaction of the Council, no development could take place. It follows that this issue is a neutral factor in the determination of the appeal.
31. I therefore conclude that if in all other respects the proposal was acceptable a suitably worded condition could be attached to ensure that any contamination could be suitably remediated and if it could not, development could not commence. Consequently, the proposal would not be at odds with Policy EH8 of the WOLP which deals with contamination and sets out that where there is evidence of contamination remedial measures must be identified and satisfactorily implemented.

Other Matters

32. I turn now to consider housing supply. The Council accept that they cannot demonstrate a five-year supply of housing. They note that following recent appeal decisions the Council's deliverable housing land supply equated to 4.38 years. Although they set out that this could potentially increase to 4.64 years if a site at Long Hanborough is included, for the purposes of this decision I have taken account of the lower figure. This is below Government expectations. Although the proposal would undoubtedly be valuable in boosting housing stock in circumstances where there is an existing shortfall, given that it would only result in the addition of one dwelling that tempers its weight.
33. I accept that the proposal would have a cumulative effect in the supply of housing and would have limited economic, social and environmental benefits. For example, it would provide some jobs and create demand for materials during the construction phase, would broaden the availability of housing in the area and once occupied would support services and local facilities. However, taking account of its contribution to addressing the housing land supply shortfall I afford the benefit of an additional dwelling limited weight.
34. I have also taken account of the fact that the appellant indicates that the proposed development would be a self-build unit. The Council has a duty under the Self Build and Custom Housebuilding Act 2015 (as amended by the Housing and Planning Act 2016) to keep a register of persons who are interested in acquiring a self-build or custom-build plot, and to also grant enough suitable development permissions for serviced plots to meet identified demand for the district.
35. The Framework supports small sites to come forward for self-build and custom-build housing. The addition of a self-build dwelling would help to address any current shortfall in provision. However, the weight afforded is significantly tempered by the fact that only one dwelling is proposed.
36. Although the Council have afforded the provision of a self-build dwelling significant weight, to my mind the benefit should only attract limited weight. Given my findings above, the development plan does not support the development of a self-build dwelling on the appeal site and given that it would only result in one additional dwelling, these factors lessens the weight I have afforded this matter.
37. In reaching that view I have taken account of the previous appeal at Brock Cottage, Brize Norton². However, the circumstances of this other case are materially different from the proposal before me. For example, the Inspector found in that case that the harm to the character and appearance of the area would be small. Moreover, unlike here, the appeal site in that case was located at one end of a stretch of ribbon housing. As result, the weight given to the benefits of the proposal relative to the harm were significantly different from the case before me.

² APP/D3125/W/21/3274197

38. I have also taken account of the fact that the proposal would be built using the core principles of the net zero carbon buildings. The effort to minimise the carbon footprint of the proposed dwelling is to be welcomed. However, the weight to be afforded to this matter is tempered by the fact that I have found that contrary to the development plan and the Framework the appeal site would not represent a location which is sustainable. I therefore accord these benefits limited weight given that the proposed dwelling would not be located where the need to travel would be limited and would introduce an isolated home in the countryside.

Planning Balance

39. I have afforded some matters weight as outlined above. Although I have considered the weight the appellant has attributed each matter, and taken account of the flow chart they have provided that has been prepared by another Council, overall, I afford the totality of the benefits moderate weight in the determination of the appeal.
40. On the other hand, I have found that contrary to the relevant policies of the development plan, the appeal site would not be suitable for residential development, including a self-build dwelling. Moreover, the proposal would unacceptably harm the character and appearance of the area. I have afforded both these matters significant weight. As a result, the proposal would conflict with the development plan and the Framework as a whole.
41. As set out above, I have determined this appeal on the basis that the Council can only demonstrate a housing land supply of 4.38 years. As a result, Paragraph 11(d) of the Framework is engaged. However, for the reasons set out above, the adverse impacts of granting permission for the proposal would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.
42. Consequently, the scheme would not represent sustainable development within the meaning of paragraph 11(d) of the Framework and this weighs substantially against the scheme.

Conclusion

43. 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. I therefore conclude that the appeal should be dismissed.

S Rawle

INSPECTOR