
Appeal Decision

Site visit made on 22 July 2024

by C Harding BA (Hons) PGCert PGDip MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 September 2024

Appeal Ref: APP/J0405/W/24/3339577

Land to the North of Bay Tree Cottage, The Gardens, Adstock MK18 2JF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Stephen Spencer against the decision of Buckinghamshire Council.
 - The application Ref 23/01556/APP, dated 19 May 2023, was refused by notice dated 31 August 2023.
 - The development proposed is erection of a new two storey dwelling and associated landscaping works.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - whether the proposal would accord with the Council's development strategy in relation to the location of residential development.
 - whether the proposal would deliver biodiversity net gain.

Reasons

Location

3. Adstock is a small village without a defined settlement boundary. It is identified as a "smaller village" in the Vale of Aylesbury Local Plan ('VALP') Policy S3. This policy also states that development outside of settlements in the hierarchy will be strictly limited. VALP Policy S2 makes provision for housing growth in smaller villages. It also states that new development in the countryside should be avoided. VALP Policy S1 states that development proposals should contribute towards meeting the vision and strategic objectives of the VALP.
4. VALP Policy D4 provides support for housing at small villages subject to criteria, including that it is located within the existing developed footprint of the village or is substantially enclosed by existing built development. The policy goes on to define 'the existing built footprint' as the continuous built form of the village, and excludes individual buildings and groups of dispersed buildings. This is stated as including former agricultural barns that have been converted, agricultural buildings and associated land on the edge of the village and gardens, paddocks and other undeveloped land within the curtilage of buildings on the edge of the settlement where the land relates more to the surrounding countryside than to the built-up area of the village.

5. The appeal site relates to an enclosed area of grassland situated to the north of Bay Tree Cottage. It contains a stable structure in its north-eastern corner. The site is served by a gated access which allows access to further stables and paddock areas to the west, beyond a mature hedgerow. The site forms part of a wider holding of land which includes Bay Tree Cottage and its garden.
6. The site is accessed via Garden Lane, a narrow road with individual dwellings fronting onto it. Although the dwellings vary in age, size and design there is a consistency to the density of development. Bay Tree Cottage is situated towards the northern end of the lane, and beyond its garden and the appeal site is a further open area before an additional dwelling ('The Laurels') is reached at the end of the lane.
7. As a result, other than the small and lightweight stable building on the appeal site, there is a significant gap in built form between Bay Tree Cottage and the The Laurels which appears as a separate development. The manege and building located to the north-west of the appeal site are largely screened by scrub and trees and do not feature prominently. The site and its immediate surroundings form a transitional area from more consistent development further to the south on Garden Lane into the wider countryside. The fact that Garden Lane terminates further to the north does not significantly affect this character, nor does any possible historic use of the appeal site for cottages as these have since been removed.
8. For these reasons, for the purposes of VALP Policy D4, the appeal site relates more to the surrounding countryside than to the built-up area of the village. Accordingly, even if I were to agree that the site forms part of the garden of Bay Tree Cottage, it would nevertheless fall within the exclusions to land comprising the existing developed footprint of the village as set out in VALP Policy D4. With open land to the north, and Garden Lane and farmland to the east, nor is it substantially enclosed by existing development.
9. Residential development on the appeal site would not, therefore, draw support from this policy and it would otherwise conflict with VALP Policies S2 and S3 in terms of comprising residential development outside of the settlement hierarchy.
10. In reaching this conclusion I have had regard to case law¹, as well as the appeal decisions² that have been brought to my attention. Each of these relates to specific circumstances and I have not been provided full details of these cases.
11. Nevertheless, on the basis of the evidence before me, none of these decisions is so comparable to the site and planning policy circumstances, that they would lead me to reach a different conclusion in this particular case. I note that the findings in *Julian Wood v SSCLG and Gravesham BC [2015] EWCA Civ 195* relate primarily to an Inspector's approach to the use of a previously defined settlement boundary, whereas Adcock is not subject to any similar designation, and I have reached my conclusions on the basis of the character of the site and its surroundings.
12. The proposal would conflict with the Council's spatial strategy in relation to the location of residential development. It would therefore be contrary to VALP Policies S1, S2, S3 and D4, the requirements of which I have set out above.

¹ Julian Wood v SSCLG and Gravesham BC [2015] EWCA Civ 195

² APP/W/M1005/W/23/3315869 and APP/G1630/W/22/3291784

Biodiversity net gain

13. The provided biodiversity net gain ('BNG') calculation indicates that the proposal would deliver BNG of 28.59%, primarily delivered offsite. However, the BNG trading rules as set out in the Biodiversity Net Gain Metric 4.0 would not be met, as there would be a net loss of mixed scrub in poor condition and rural trees (non-native fruit trees) which are of medium distinctiveness without compensation. There are also areas of dispute between the parties in relation to habitat classification of mixed scrub and trees to be provided within the site, and whether the proposed area of offsite biodiversity improvement has also been appropriately classified.
14. The appellant has suggested that the delivery of BNG could be secured by means of a planning condition requiring the submission of a Landscape and Ecological Management Plan and securing 30 years of maintenance. Although the Council has suggested some wording for a such a condition, this has been provided without prejudice and it is clear that it considers that the appropriate mechanism for securing the BNG measures would be by means of a planning obligation.
15. The area of land for offsite habitat creation is not within the ownership of the appellant, but I understand the land is owned by a family member, and that the landowner would have no objection to the use of the land for BNG purposes. However, this would not necessarily be the case in the future, and I am not aware of any barrier to the land being sold or passed on. The current freeholder or any future freeholder would not be subject to the requirements of the condition. Accordingly, I am not satisfied that the suggested condition would provide sufficient surety that the biodiversity improvements would be delivered or retained for the required 30-year period, as it would be unenforceable.
16. A planning obligation, with the freeholder as a signatory and registered as a land charge, would provide surety and would be enforceable by the Council. It would therefore represent the appropriate means of securing the off-site biodiversity improvements. However, no planning obligation in this regard is before me.
17. Therefore, even if I were to agree with the appellant in relation to the remaining areas of BNG dispute, it has not been shown that the stated improvements could be delivered and retained in the future, in any event.
18. The proposal would fail to make provision for BNG. It would therefore be contrary to VALP Policy NE1 which seeks to protect and enhance biodiversity, by amongst other means, achieving a net gain in biodiversity on minor and major developments.

Other Matters

19. The Council also considers that the proposal would amount to urban sprawl contrary to VALP Policy NE4, however, whilst it would lead to an extension of the built-up area of the settlement, there is no substantive evidence before me which would indicate that the proposal would result in unacceptable harm to landscape character. It would, therefore, accord with VALP Policy NE4, which states that development should respect local landscape character and distinctiveness.
20. Even if I were to agree with the appellant in relation to the design of the proposal, its effect upon the character and appearance of the area, its effect

upon the living conditions of occupiers of nearby properties and future residents, and its effect upon flood risk, these are neutral factors which would not weigh in favour of the proposal.

Planning Balance and Conclusion

21. The Council cannot demonstrate a five-year supply of deliverable housing sites. I am therefore taken to paragraph 11 (d) (ii) of the National Planning Policy Framework ('the Framework'). Consequently, permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
22. The proposal would make a positive, albeit modest contribution towards boosting housing where the Council has stated that it can demonstrate only 4.7 years supply of housing sites. It would also result in some economic benefits during the construction phase and through local expenditure by future residents. Although paragraphs 60 and 85 of the Framework highlight the importance of ensuring an adequate supply of housing sites, and the need to support economic growth and productivity, having regard to the small scale of the proposal, I give these considerations moderate weight as benefits.
23. It is stated that the proposal would allow the appellant to move closer to family members who occupy Bay Tree Cottage and assist with managing the wider landholding, as well as other community tasks that the family currently undertake, as family members become older. This would represent a further benefit of the proposal. However, I am not aware of any particular special circumstances in relation to family members that would require accommodation on adjacent land, and that other equally suitable accommodation could not be secured within the settlement. Moreover, the harm that I have found would persist beyond the likely duration of these family circumstances. Accordingly, I afford them minor weight in my considerations.
24. The proposal would also improve the security of surrounding land, including the family's manège, although there is no substantive evidence before me which would demonstrate that the site is currently subject to unusually high levels of crime. It would also be of an energy efficient design. These factors are further benefits of the proposal to which I afford minor weight.
25. Weighed against these benefits is the harm that I have identified as a result of the proposal's conflict with the spatial strategy for delivering new homes and its failure to deliver BNG.
26. Taking account of paragraph 11 (d) of the Framework, I conclude that the adverse impacts of the development would significantly and demonstrably outweigh the benefits. Consequently, the presumption in favour of sustainable development does not apply in this case.
27. The proposal would conflict with the development plan as a whole and there are no material considerations of sufficient weight, including the provisions of the Framework, to indicate that a decision should be taken other than in accordance with it. For the reasons given above, I conclude that the appeal should be dismissed.

C Harding

INSPECTOR