



Appeal Decision

Site visit made on 4 December 2024

by Rachel Hall BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29th January 2025

Appeal Ref: APP/K0425/W/24/3344804

12 Chestnut Lane & Jig Store and Garage, Hazlemere, High Wycombe, Buckinghamshire HP15 7BZ

- 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 James Griffiths of Shanly Homes against the decision of Buckinghamshire Council - West Area (Wycombe).
 - The application Ref is 23/07272/OUT.
 - The development proposed is 'outline application (including details of layout/scale/access/appearance) for the demolition of the existing nursery building hard paving and garages and the erection of 2 x 3 bedroom semi-detached two storey dwellings'.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for an award of costs was made by Buckinghamshire Council against Mr James Griffiths of Shanly Homes. This is the subject of a separate Decision.

Preliminary Matters

3. For clarity on the site location, the address above is taken from the appellant's appeal form rather than the original application form, and is consistent with that used on the Council's decision notice.
4. The application is submitted in outline, with only details of landscaping reserved for future consideration. The appeal site falls within the boundary of the outline planning permission for redevelopment of Highbury Works for 16 dwellings (Ref 21/06864/OUT) (the wider scheme). That wider scheme included the retention of the nursery building that is proposed for demolition under this appeal. Reserved matters for the wider scheme has also been approved (Ref 23/06950/REM).
5. A revised National Planning Policy Framework (Framework) was published on 12 December 2024. The main parties were given the opportunity to comment on the implications of this policy change in relation to the appeal. Any comments provided have been taken into account in this decision.
6. Subsequent to the publication of the Framework, the Council has advised that it cannot demonstrate a five year housing land supply. Having regard to the approach in the Framework and in light of strategic policies in the Wycombe District Local Plan (August 2019) (Local Plan) being more than five years old,

its interim position for the west area based on the current deliverable supply up to 31 March 2023 is stated as 2.03 years. Whilst only an interim position this indicates a considerable shortfall, which is said to represent an undersupply of 4,323 homes. Consequently, paragraph 11.d) of the Framework is engaged. I return to this subsequently.

7. The appellant submits that as the nursery building is a Class E use it could be changed to another use within Class E without the need for planning permission (the Class E fallback position). Also, that the nursery building could be changed to a residential use under the Class MA permitted development rights (the Class MA fallback position). In the event of the appeal being unsuccessful I consider that there is a greater than theoretical possibility that one or other of these fallback positions might take place. Therefore, they amount to valid fallback positions.
8. The appeal site is part of a wider allocation under Policy HW14 of the Local Plan. This policy sets out requirements which include that the existing nursery is retained or relocated within the allocated site. The appellant submits that Policy HW14 is out of date on the basis that it seeks retention of the nursery on site, whereas as just described there is flexibility to change uses within Class E or by using Class MA permitted development rights, without the need for planning permission.
9. Nonetheless, the presence of such flexibility does not preclude there being circumstances where more restrictive policies are justified, for example, in the interests of protecting community facilities. The Framework confirms that non-strategic policies should be used to set out more detailed policies for specific areas, neighbourhoods or types of development. Accordingly, insofar as it relates to this appeal, Policy HW14 is broadly consistent with the Framework and attracts full weight.
10. The Council's fourth reason for refusal related to the impact of the proposal on biodiversity. However, in their appeal statement the Council confirms that the proposal is now considered acceptable in that regard, subject to suitably worded conditions. This is in light of additional information submitted at appeal, in the form of a preliminary ecological appraisal, bat survey and biodiversity net gain assessment. These provide evidence that the proposal would not harm protected species and would be capable of achieving a biodiversity net gain of greater than 10 percent relative to the baseline. Therefore, the proposal is acceptable with respect to biodiversity. As this is no longer a matter in dispute between the main parties, it is not a main issue.

Main Issues

11. The main issues are:

- whether it has been demonstrated that the proposal is acceptable with respect to the loss of the nursery;
- whether it has been demonstrated that the proposal is acceptable with respect to affordable housing provision;
- whether the proposal is acceptable with respect to accessible housing provision;

- whether the proposed access arrangements are acceptable with regard to the requirements under Policy HW14 of the Local Plan;
- the effect of the proposal on the character and appearance of the surrounding area; and
- whether the proposal would be acceptable with regard to the living conditions of the future occupants of plot 1 within the wider scheme, with respect to privacy.

Reasons

Loss of nursery

12. The proposed loss of the nursery is in conflict with the requirement for its retention or relocation within the allocated site under Policy HW14 of the Local Plan. In addition, Policy DM29 of the Local Plan requires that the loss of a building in community use should be supported by an assessment that clearly demonstrates that the use is surplus to community needs. Although there are said to be ample nursery facilities in the locality, no robust evidence is provided to indicate that the current nursery is surplus to requirements. For example, no substantive evidence indicates that demand for its services has dwindled, or that other nurseries in the locality have sufficient capacity to accommodate the needs of those using the appeal site nursery. In the absence of a community needs assessment, the loss of the nursery is not justified under the terms of Policy DM29.
13. Furthermore, Policy DM5 of the Delivery and Site Allocations Plan (July 2013) (Allocations Plan) seeks to ensure that proposals for residential development on sites that are employment generating are supported by evidence that the existing use is no longer feasible. This includes a requirement for marketing of the site. No such evidence is before me. Although the nursery is said to only employ up to five adults, it is a current employment generating use. Moreover, Policy DM5 does not only apply to uses above a certain number of employees. Consequently, the proposal conflicts with Policy DM5.
14. Under the Class E fallback position, the building could be occupied by an alternative Class E use rather than a nursery. However, the building currently appears to be operating successfully as a nursery and the building is set up with the facilities to do so. Rather than being badly located, its position within a residential area would indicate that there is a considerable population of families with nursery age children living within walking distance of the site. Moreover, no robust evidence has been submitted to indicate that the building would meet a particular demand for an alternative Class E use, or that an alternative Class E use would make better use of the space. As such, the prospect of the nursery being lost due to its replacement with an alternative Class E use attracts limited weight.
15. Similarly, a change of use to residential may be feasible under the Class MA fallback position. However, where such a proposal involves the loss of services provided by a registered nursery, certain conditions apply¹. This includes that the developer must apply to the Council for a determination as to whether the Council's prior approval will be required as to the impact on local nursery provision. Whilst the appellant submits that the nursery would be required to

¹ MA.2.-Conditions of The Town and Country Planning (General Permitted Development) (England) Order 2015

close during construction of the wider scheme for a period of 18 months or two years, no robust evidence is before me to demonstrate that such a closure would be necessary or could not be avoided through management of the construction process.

16. Moreover, it is not inevitable that refurbishment of the nursery building would make it unaffordable for the existing nursery, even taking into account wider economic factors potentially affecting the nursery's profitability, such as rising costs and falling birthrates. Also, the appellant confirms that the landowners are happy to continue to lease the building to the nursery for the foreseeable future. Therefore, without substantive evidence to the contrary, there is considerable uncertainty that such a prior approval would be granted. Accordingly, the Class MA fallback also attracts limited weight. Consequently, the fallback positions do not alter my conclusions on this main issue.
17. Therefore, it has not been demonstrated that the proposal is acceptable with respect to the loss of the nursery. Thus, it conflicts with Policies HW14 and DM29 of the Local Plan and Policy DM5 of the Local Plan. Together, these seek to ensure proposals involving the loss of community and/or employment generating uses are appropriately justified. As the proposal is not for a mixed use, Policy DM6 of the Allocations Plan is not relevant here. Whilst Policy DM21 of the Local Plan supports housing on allocated sites such as this, that policy is not relevant to this main issue.

Affordable Housing

18. Part 3 of Policy DM24 of the Local Plan requires that where a development falls below the affordable housing policy threshold but comprises part of a larger site that exceeds the threshold, affordable housing will be required on a pro rata basis. The viability report submitted for the wider scheme was found to demonstrate that provision of affordable housing was not viable on that scheme. That viability report took into account that the appeal site nursery would be retained, thus the appeal site formed part of the viability case for that scheme. Moreover, the appeal site was included within the red line boundary for that proposal. As such, in the context of Policy DM24 the appeal site forms part of a larger site and the requirement for affordable housing under part 3 of that policy applies. This comprises a requirement for 48 percent affordable housing, equivalent to one dwelling (with rounding).
19. The appeal scheme represents a notable modification to the circumstances that informed the viability report for the wider scheme. Furthermore, that report dates from 2021. Consequently, a period of more than three years has elapsed, during which time factors influencing development viability are likely to have changed. Accordingly, the 2021 report does not form a sufficiently robust basis on which to determine whether an absence of affordable housing provision for the appeal scheme is justified.
20. Therefore, it has not been demonstrated that the proposal is acceptable with respect to affordable housing provision. Consequently, the proposal conflicts with Policy DM24 of the Local Plan. Given the modest scale of the proposal, this amounts to a moderate harm. Policy CP7 of the Local Plan is referenced by the Council in respect of the lack of affordable housing provision. However, that Policy is concerned with provision of infrastructure to support growth. As such, it is not relevant to this main issue.

Accessible Dwelling

21. Part 2 of Policy DM41 of the Local Plan specifies that all new dwellings should achieve the standards in Building Regulations Approved Document M4(2). Also, part 3 requires that a specified proportion of homes should be provided as accessible dwellings in line with Building Regulations Approved Document M4(3). It clarifies that part 3 applies where on-site affordable housing is required under Policy DM24. As reasoned above, when considered alongside the wider scheme, there is a requirement for affordable housing for the appeal scheme. Nonetheless, the percentages under part 3 of Policy DM41² cannot readily be applied to a scheme of two dwellings.
22. Furthermore, the appellant has confirmed that the proposed dwellings would be constructed as M4(2) (accessible and adaptable dwellings). In the event of a successful appeal, there is potential for this to be secured by a suitably worded condition. Therefore, notwithstanding the conflict with part 3 of Policy DM41, the proposal would be acceptable with respect to accessible housing provision and would accord with the policy as a whole.

Site Access

23. Parts 2 and 3 of site's allocation under Policy HW14 of the Local Plan relate to site access requirements. The access arrangements for the wider scheme were found to be generally acceptable with regard to the proposed accesses from Chestnut Lane and Pheasants Drive, including minimising additional traffic from Inkerman Drive. It was also found to be acceptable with regard to the creation of a sufficiently permeable layout for pedestrians and cyclists between Chestnut Lane and Pheasants Drive. Those access provisions of the wider scheme would not be compromised by the appeal scheme. As such, I see no reason to conclude otherwise than that the proposed access arrangements would be acceptable with regard to the requirements under Policy HW14 of the Local Plan.

Character and Appearance

24. The appeal site is located in a relatively dense residential area where houses are positioned reasonably close to one another on modest sized plots. As a result, there are views of houses on other roads in gaps between buildings. The view up Chestnut Lane is currently terminated by a single storey building positioned close to the pavement. Some local roads, such as Pheasants Drive, are curved. Consequently, houses that front on to those roads appear staggered. The steeply sloping topography of the area also creates a staggered effect for roof lines. Due to the layout of roads, houses positioned at 90 degrees to one another is also a common feature.
25. The proposed building would be set forward relative to the front elevation of adjacent houses on Swallow Drive. However, given the general staggering of house positions in the locality, this would not appear out of place. Although set further forward than the existing nursery building, it would still appear set back relative to the existing single storey building that terminates Chestnut Lane. Also, on implementation of the wider scheme, it would be set back relative to the house on proposed plot 9.

² 30% of any affordable homes; and 20% of any market homes.

26. Accordingly, the proposal would not harm the character and appearance of the surrounding area. Therefore, it would accord with Policies CP9 and DM35 of the Local Plan which generally seek to ensure developments achieve high quality design having regard to the surroundings. Similarly, in the particular circumstances of this case, it would be acceptable with respect to the principles in the Council's Housing Intensification Supplementary Planning Document (2005).

Living Conditions

27. The proposed first floor rear windows on plot 2 would face towards the rear garden of proposed plot 1 on the wider scheme. This would present the opportunity for a degree of overlooking of the rear garden of plot 1. However, the set back between those windows and the garden boundary is shown to be over 10 metres. Also, as reasoned above, houses positioned at 90 degrees to one another at relatively high density are not uncommon in the locality. Accordingly, the degree of overlooking would not be to the extent that it would unacceptably harm the living conditions of the future occupants of proposed plot 1 on the wider scheme.
28. Furthermore, the existing nursery has rear facing dormer windows. These are positioned closer to the rear site boundary than the proposed dwellings. As such, the existing building would provide opportunities for overlooking of the rear garden of proposed plot 1 at closer proximity than the appeal scheme. Consequently, the existing position would be more harmful than the appeal scheme in respect of overlooking.
29. Therefore, the proposal would be acceptable with regard to its effect on the living conditions of the future occupants of plot 1 within the wider scheme, with respect to privacy. It would thus comply with policy DM35 of the Local Plan. Amongst other matters this seeks to ensure proposals provide a level of privacy for future occupants that is appropriate to the proposed use.

Other Matters

30. The appellant submits that the proposal would result in highway benefits through the reduction in on-street parking by staff, a reduction in vehicle trips to and from the site, and a reduction in pedestrian trips on pavements that are narrow in places requiring users to walk in the road. However, given the number of staff said to be employed at the nursery, not all of which will necessarily travel by car, the benefit of a reduction in on street parking would likely be very modest.
31. Similarly, there would likely be a reduction in vehicle trips as a result of the appeal scheme. Nonetheless, given the size of the nursery and its accessibility by sustainable transport modes, I am not persuaded that traffic from users of the nursery was a particular issue here. Such a benefit would therefore be very modest. Whilst there would likely be a reduction in pedestrians travelling to and from the site on sections of narrow pavement, no substantive evidence indicates that pedestrian safety was a particular issue here.

Planning Balance

32. In the circumstances of this case, the proposed loss of the nursery would be contrary to Policies HW14 and DM29 of the Local Plan, and Policy DM5 of the Allocations Plan. It has also not been demonstrated that an absence of

affordable housing provision, when considered alongside the wider site, would be acceptable. Thus, it would be contrary to Policy DM24 of the Local Plan. For the purposes of this appeal, those policies are broadly consistent with the Framework. The proposal would make a small contribution to the Council's considerable housing shortfall on an allocated site, along with other modest benefits. Compliance with policies in respect of matters such as character and appearance and access are neutral considerations. However, given the fundamental policy conflicts identified, the proposal conflicts with the development plan when taken as a whole.

33. The Framework gives support to the development of brownfield land within settlements. The Government's objective is to significantly boost the supply of homes. The proposal would achieve an incremental increase in housing supply in a residential area with access to a range of local services and facilities. Whilst a small contribution, the net increase of two residential units is a benefit in the context of the Council's housing land supply shortage to which I afford considerable weight. Construction of the dwellings would provide short term benefits to the local and wider economy. The occupants would be likely to stimulate consumer spending, boost local labour supply and help to support local services, which would all constitute modest benefits in social and economic terms. The proposal would achieve an on site net gain to biodiversity well in excess of 10 percent. Given the relatively small size of the site this benefit would be modest.
34. Whereas, the Framework requires that decisions guard against the unnecessary loss of valued facilities and services and also ensure that established facilities and services are able to develop, modernise and be retained for the community. For the reasons given the loss of the nursery has not been adequately justified. Moreover, without further details, considerable uncertainty remains over the potential for relocation of the business and its associated jobs to suitable alternative premises. Consequently, harm from loss of the nursery provision and harm from the loss of its associated jobs attract considerable weight.
35. The Framework also seeks to ensure housing development meets an area's identified housing need with an appropriate mix of housing types for the local community. The Framework only requires affordable housing on major housing sites. Nonetheless, as reasoned above the appeal scheme forms a part of the wider scheme which takes it above the threshold in the Framework for which an affordable housing requirement would be required. Therefore, the absence of affordable housing provision on the appeal site is a further harm. Given the modest scale of the proposal this attracts moderate weight. As such, it has not been demonstrated that the proposal would make effective use of the land.
36. Therefore, I have found the contribution to housing supply to be a considerable benefit alongside other modest benefits. However, the enduring harm from the loss of the nursery and its associated employment provision, together with the lack of affordable housing, significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Consequently, the proposal does not represent sustainable development.

Conclusion

37. Having taken all other relevant matters into account, the proposal conflicts with the development plan taken as a whole and with the approach in the Framework. Therefore, the appeal should be dismissed.

Rachel Hall

INSPECTOR