
Appeal Decisions

Hearing held on 2 December 2014

Site visits made on 3 and 8 December 2014

by Jessica Graham BA(Hons) PgDipL

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 9 January 2015

APPEAL A: Ref. APP/Q3305/A/14/2222455

Land to the east of Grange House, Parsonage Lane, Chilcompton, Somerset BA3 4JZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr R Thorner against the decision of Mendip District Council.
 - The application Ref 2013/2071, dated 30 September 2013, was refused by notice dated 18 June 2014.
 - The development proposed is the erection of dwellings together with ancillary buildings and formation of vehicular and pedestrian access.
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APPEAL B: Ref. APP/Q3305/A/14/2222457

Land to the north of White Hayes Cottage, The Street, Chilcompton, Somerset BA3 4HN

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr R Thorner against the decision of Mendip District Council.
 - The application Ref 2013/2092, dated 30 September 2013, was refused by notice dated 18 June 2014.
 - The development proposed is the erection of dwellings together with ancillary buildings and formation of access to highway.
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APPEAL C: Ref. APP/Q3305/A/14/2222459

Land at Somer Lea, Chilcompton, Somerset BA3 4HE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Mr R Thorner against Mendip District Council.
 - The application, Ref 2014/0221, is dated 9 February 2014.
 - The development proposed is the erection of dwellings and garages and construction of accesses.
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Decisions

1. APPEAL A is dismissed.
2. APPEAL B is dismissed.
3. APPEAL C is dismissed and outline planning permission for the erection of dwellings and garages and construction of accesses is refused.

Procedural matters

4. The application that is now the subject of APPEAL A proposed a total of 54 new residential units. It was made in outline, with details of scale, layout, access, appearance and landscaping reserved for future determination. My consideration of the appeal proceeds on that basis.
5. The application that is now the subject of APPEAL B proposed a total of 30 new residential units. It was made in outline, with details of scale, layout, access, appearance and landscaping reserved for future determination. My consideration of the appeal proceeds on that basis.
6. The application that is now the subject of APPEAL C proposed a total of 9 new residential units. The Council failed to determine the application within the prescribed period, but subsequently advised that had it determined the application, it would have refused planning permission for reasons that can be summarised as follows:
 - (1) the site lies outside the Chilcompton Settlement Limit, and since the Council can demonstrate a 5 year supply of housing land, the benefits of the scheme in terms of housing delivery would not outweigh the harmful impact it would have on the character of the countryside; (2) insufficient information to demonstrate that access could be provided without harm to protected trees; (3) insufficient information to demonstrate that any adverse impact on protected species or habitats could be adequately mitigated; and (4) the absence of a planning obligation securing the provision of affordable housing.
7. The application that is now the subject of APPEAL C was made in outline, with details of access provided for consideration. However, at the hearing, the appellant acknowledged my concern that the paucity of information provided about the proposed access arrangements (limited to a single plan, with the site outlined in red, and 9 arrows labelled as "indicative individual access points onto highway") precluded a proper assessment of access arrangements at this stage. It was therefore agreed that my determination of this appeal should proceed on the basis that details of access, along with details of scale, layout, appearance and landscaping, were reserved for future determination.
8. At the Hearing the appellant sought to submit additional information in respect of Appeal A, comprising an Ecology Report, Transport Assessment, Travel Plan, and a Flood Risk and Drainage Assessment. I understand that this information was produced in an attempt to address some of the Council's reasons for refusal, and had been submitted to the Council 4 weeks prior to the date of the Hearing. However, the Council told me that it had not been able to review the new material; that it would need an adjournment of 4 weeks in which to do so; and that it strenuously opposed its introduction at this late stage.
9. The Planning Inspectorate's *Procedural Guide: Planning appeals – England* explains that while appellants may add to the information they supplied with their planning application, their whole case should be fully disclosed in the written statement of case that accompanies their appeal, along with any supporting evidence and documents. It also advises that new evidence submitted at a later stage will only be accepted in exceptional circumstances.

10. From what I was told at the Hearing, I was not satisfied that there were exceptional circumstances such as would have made it impossible for the appellant to submit the additional evidence at the same time as the statement of case, and such as would justify a 4 week adjournment. I was also concerned that it would be procedurally unfair to the Council and other interested parties to take the new material into account without such an adjournment. I therefore ruled that the Hearing should proceed without regard to the new material.
11. At the Hearing the appellant also sought to submit draft S.106 Undertakings for each site, in order to secure the provision of affordable housing and other infrastructure. While I understand interested parties' concerns that the late submission of these documents meant that they had not had a prior opportunity to view them, the S.106 Undertakings differ from the "additional information" discussed above in that they do not introduce new evidence, but simply provide a legal mechanism for securing the affordable housing, and various financial contributions, requested by the Council. I therefore agreed that the Council should have 2 weeks to review and submit comments on the appellant's three draft S.106 Undertakings, and the appellant would then have a further week to execute and submit the finalised Undertakings. The executed Undertakings were duly provided in accordance with that timetable.
12. At the date of the Hearing, the Development Plan consisted of the Mendip District Local Plan adopted in 2002. The emerging Mendip District Local Plan Part 1: Strategies and Policies 2006 - 2029 was however at an advanced stage in its progress towards adoption, and so was accorded considerable weight in the Council's assessment of the three development proposals. On 15 December 2014 the Council duly adopted Part 1 of the new Local Plan such that, together with those policies of the 2002 Local Plan which have not yet (pending the adoption of Part 2) been superseded by the new Local Plan, it forms the Development Plan for the purposes of determining these three appeals.
13. At the Hearing an application for costs was made by the Council against the appellant. That application is the subject of a separate Decision Letter of even date.

Policy context

14. All three appeal sites lie outside the Development Limit for Chilcompton, as defined by the 2002 Local Plan (a definition that will remain extant unless and until it is revised by Part 2 of the new Local Plan). Consequently, the proposed residential development of each site would conflict with Policies CP1 and CP2 of the recently adopted Local Plan Part 1, which seek to restrict development at "Primary Villages" (Chilcompton is thus defined) to allocated sites, or sites within the Development Limits. However, the government's National Planning Policy Framework (NPPF) advises that in certain situations, including where Councils are unable to demonstrate a five-year supply of deliverable housing sites, relevant Local Plan policies should be considered out of date.
15. It will therefore be helpful to begin by assessing the extent to which any such national policy considerations affect the application of Local Plan policies in the general context of Chilcompton, before going on to look at the site-specific circumstances of each of the three appeals.

Reasons

Are the Development Limits out of date?

16. Paragraph 215 of the NPPF states that weight should be given to existing Development Plan policies according to their degree of consistency with the NPPF: the closer the Development Plan policies to the policies in the NPPF, the greater the weight they may be afforded. The appellant points out that the Development Limits defined by the 2002 Local Plan, which are retained in the newly adopted Local Plan Part 1, were adopted before the introduction of the NPPF, and have not been reviewed since the early 2000s. The appellant goes on to argue that since the Local Plan Part 1 only allocates strategic sites, and since the Council is committed to undertaking a review of Development Limits in the course of producing Part 2 of the Local Plan, those Development Limits must for the present be regarded as out of date.
17. I am not persuaded by that argument. In order to achieve the District's housing requirement, Part 2 of the Local Plan may, or may not, need to make provision for some, or all, of the current Development Limits to be re-drawn. In my judgment, paragraph 215 of the NPPF cannot properly be interpreted as requiring that until the extent of any necessary changes has been established, the existence of the current Development Limits should be disregarded as "out of date". To take that approach would effectively be to sanction residential development in the countryside without regard to the quantified need for it.
18. I am confirmed in this view by the terms of paragraph 49 of the NPPF, which directly addresses the circumstances in which existing Development Plan policies will be overridden by the need to provide sufficient housing. It does this by reference to the quantified housing need for the area, specifying that policies relevant to the supply of housing will be rendered out-of-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites.

Can the Council demonstrate a five year supply of deliverable housing sites?

19. In order, then, to determine whether Local Plan policies relevant to the supply of housing should be considered out-of-date by operation of paragraph 49 of the NPPF, it is necessary to establish whether the Council is able to demonstrate a five-year supply of deliverable housing sites. The most logical way to do that is firstly to determine the housing requirement for the next five years, and then to assess whether the supply of deliverable sites is sufficient to meet it.
20. The Council has produced a statement on its five-year housing land supply [Document 4], together with deliverability evidence [Document 5] and a housing trajectory for the district [Document 6]. This explains that to meet the Local Plan housing requirement, at least 6,152 dwellings will need to be built by 2029. This equates to the provision of 410 units per year, or 2,051 dwellings over 5 years. Adding in a 5% buffer, as required by paragraph 47 of the NPPF, results in a housing requirement of 2,153 dwellings over the next 5 years. The Council's evidence is that there are sufficient deliverable sites to supply 2,550 dwellings in that period, such that the five-year requirement will be exceeded by 397 dwellings.

21. The appellant has raised a number of doubts about the deliverability of some of these sites. Given the existing state of the housing market, I can understand concerns that the proposed delivery of 581 houses in 2014-2015 – a greater number of completions than has been achieved in any of the previous 8 years – is ambitious. However, while reflective of the NPPF requirement to “boost significantly the supply of housing”, this figure is not merely aspirational: it is derived from the considerable amount of supporting information that the Council has acquired and analysed in order to assess its housing supply position.
22. The appellant also suggested that the 5% “non-implementation allowance”, deducted by the Council from the number of dwellings assessed as deliverable on sites which have planning permission that has not yet been implemented, should be increased to 10%. However, Footnote 11 to paragraph 47 of the NPPF advises that “sites without planning permission should be considered deliverable until permission expires, unless there is clear evidence that schemes will not be implemented within five years.” Where the Council was provided with such evidence, it excluded the affected schemes from its deliverability calculation: the 5% non-implementation allowance, then, reflects only the theoretical possibility – rather than the evidenced probability – that some of the remaining schemes might not be implemented. That is a cautious, but nevertheless reasonable, approach.
23. At the hearing, the appellant outlined reasons why some of the specific sites identified in the Council’s Deliverability Evidence [Document 5] might not deliver dwellings as promptly, or in such numbers, as the Council contends. I was impressed by the professionalism of the appellant’s agent, and have no reason to doubt his evidence, or the validity of his considerable experience of the pressures faced by housing developers in the local area. However, the weight that I attach to this evidence is restricted by the fact that it was limited to verbal reports of conversations with such developers, and suppositions based on publicly available information. By contrast, the Council’s evidence is based on a comprehensive schedule of all current development sites in the district which will provide one or more additional dwellings, supported by schedules of deliverability evidence that were compiled as a result of information and delivery estimates obtained from the relevant developers, agents, landowners, and the Council’s own planning officers, recently updated to reflect the position as at 31 September 2014. I attach considerable weight to this evidence.
24. It is also worth noting that any attempt to forecast the number of houses likely to be delivered in the next five years cannot, due to the very nature of predicting the future, be wholly reliable. Thus, while some of the dwellings identified for delivery may not materialise, others may come forward that have not been included in the calculated supply. For example, Schedule 2 identifies sites for a total of 225 – 235 dwellings which have not been included in current calculations, since they do not have planning permission, but which the Council nevertheless considers have a prospect of delivery in five years.
25. On balance, I conclude that having regard to the best available evidence, the Council is able to demonstrate a five-year supply of deliverable housing sites.

Policy implications of the housing supply position

26. This means that there is no reason, in this case, to treat Local Plan policies as out-of-date. The three appeals should be determined in accordance with the Development Plan, unless material considerations indicate otherwise.

Appeal A: site-specific matters

27. In addition to the location of the site outside the Chilcompton Development Limit, the Council's reasons for refusing to grant planning permission for the proposed residential development of this land to the east of Grange House were the lack of sufficient information to make a full assessment of the traffic impact; the absence of protected species survey information; the absence of a satisfactory Flood Risk Assessment, and the absence of appropriate contributions toward the provision of public recreational open space, education, affordable housing or a Travel Plan.
28. The Highway Authority is satisfied that there is sufficient scope to create a suitable access route to the site, with adequate provision of visibility splays. The concern that remains is whether the additional traffic likely to be generated by the proposed housing development, both vehicular and non-vehicular, could be accommodated within the existing highway network without a material adverse impact on highway safety.
29. Local residents outlined existing difficulties caused by the narrow width of Parsonage Lane, and the sporadic nature of its pedestrian footways. However, these features, and associated difficulties, are not unusual in the context of a rural village lane. It may be, as the Council acknowledges, that existing volumes of traffic are such that the proportional increase associated with the proposed development would not have any significant impact on highway safety. In the absence of further information, I can reach no reliable conclusions on that point. However, for present purposes, it is sufficient to note that even if a detailed Transport Assessment showed conclusively that the proposal would be acceptable in terms of its impact on highway safety, that would not constitute a benefit that weighed in favour of granting planning permission: it would simply mean that this would not be a factor that weighed against granting permission.
30. Guidance set out in Government Circular 06/2005 *Biodiversity and Geological Conservation – Statutory Obligations and their impact within the planning system* states that it is essential that the presence or otherwise of protected species on a site, and the extent to which they may be affected by a proposed development, be established before planning permission is granted. To that end, the Circular advises that the need to ensure ecological surveys are carried out should only be left to coverage under planning conditions in exceptional circumstances. The Circular also recognises a need for proportionality, such that developers should not be required to undertake surveys for protected species unless there is a reasonable likelihood of the species being present and affected by the proposed development.
31. Given that the appeal site is open pasture land that lies close to a river and to woodland, and bearing in mind the evidence of local residents, and Natural England's standing advice about the circumstances in which surveys would be required, it seems to me that there is a reasonable likelihood that protected species may be affected by the proposed development of the site for housing.

In the absence of an ecological survey, identifying the nature of any impact on protected species and the extent to which (if at all) mitigation for that impact could be provided, I would have serious concerns about granting planning permission subject to a condition requiring this information to be provided at a later date. Again, it is material to note that even if it were established that there would be no adverse impact on protected species, or that adequate mitigation could be provided, this would not constitute a benefit of the proposed development, but the absence of an adverse impact.

32. Similarly, even if I were to accept that concerns about flooding could be adequately addressed by imposing a condition preventing the scheme from going ahead until such time as the Council and Environment Agency had been provided with sufficient information to be satisfied that the development would not increase the risk of flooding at the appeal site or elsewhere, this would secure only an absence of harm, rather than any positive benefit.
33. In accordance with the timetable agreed at the hearing, the appellant has now provided a S.106 Undertaking intended to secure the affordable housing, Travel Plan and financial contributions requested by the Council in respect of this appeal site. At this stage, I have not assessed the extent to which these planning obligations would comply with the requirements of Community Infrastructure Levy Regulation 122. I simply note that even if they were to comply with those statutory requirements, their effect would be limited to addressing the adverse impact that the proposed development would otherwise have on local services and infrastructure, and to securing its compliance with Development Plan policy. In other words, the planning obligations, if found effective, have the capacity to provide mitigation, rather than carrying any positive weight in favour of granting planning permission.

Appeal B: site-specific matters

34. In addition to the location of the site outside the Chilcompton Development Limit, the Council's reasons for refusing planning permission for the proposed residential development of this land to the north of White Hayes Cottage concerned the absence of provision for required affordable housing and financial contributions towards public recreational open space and education. The appellant has now provided a S.106 Undertaking which seeks to address these three requirements. I do not here assess the extent to which the planning obligations contained in that Undertaking meet the relevant statutory tests, but as discussed above, I note that if effective, they would serve to provide mitigation rather than carrying any positive weight in favour of granting planning permission for this scheme.

Appeal C: site-specific matters

35. The proximity of the appeal site at Somer Lea to mature trees and grassland makes it a potentially suitable habitat for protected species such as bats and breeding birds, and so I share the Council's concern that there is a reasonable likelihood that protected species may be affected by the proposed residential development of the site. As with Appeal A, in the absence of an ecological survey, identifying the nature of any impact on protected species and the extent to which (if at all) mitigation for that impact could be provided, I would have serious concerns about granting planning permission subject to a condition requiring this information to be provided at a later date. Again, it is material to note that even if it were established that there would be no adverse

impact on protected species, or that adequate mitigation could be provided, this would not constitute a benefit of the proposed development, but the absence of an adverse impact.

36. I also share the Council's concern about the feasibility of providing adequate access arrangements for the proposed new dwellings without compromising the health and longevity of the two beech trees to the north of the appeal site, which are protected by Tree Preservation Orders. However, since I am considering this appeal in outline, on the basis that details of access and layout are reserved for future determination, it would remain open to the Council to refuse any future Reserved Matters applications which did not detail satisfactory access arrangements for the number, and configuration, of dwellings then proposed.
37. In addition to its concerns about the impact of the development on protected species, the access arrangements and the location of the site outside the Chilcompton Development Limit, the Council noted the absence of a mechanism to secure the required provision of affordable housing. The appellant has now provided a S.106 Undertaking, intended to function as such a mechanism. As with the other two appeals currently under consideration, I have not assessed whether the content of the Undertaking meets the relevant statutory requirements for planning obligations, but note that even if it does, it would serve to provide mitigation rather than carrying any positive weight in favour of granting planning permission for this scheme.

Conclusions

38. I have found that the Council is able to demonstrate a five-year supply of deliverable housing sites, and have not found any other reason to treat relevant Local Plan policies as out-of-date. Each of the three appeal proposals would conflict with Policies CP1 and CP2 of the recently adopted Local Plan Part 1, which seek to restrict residential development outside the Development Limits of villages such as Chilcompton.
39. Assessing the proposals on a site-specific basis, I have found no material considerations that would weigh in favour of granting planning permission. Taking a more general overview, I note the appellant's contention that since the Local Plan Inspector found that the district's housing requirement figures should be treated as minima, there would be some benefit in bringing more housing forward as swiftly as possible, to accord with the NPPF requirement to "boost significantly" the supply of housing. However, it is important, in my view, to bear in mind another requirement of the NPPF: that the planning system "be genuinely plan-led". In circumstances where a Council has an adopted Local Plan which makes adequate provision to meet its housing requirement for the next five years, I see no benefit in bringing forward additional housing that does not accord with that Local Plan.
40. Similarly, while I note the acknowledged existing need for affordable housing, I consider the fact that the provision made in the Local Plan for its delivery has recently been found sound means that little, if any, benefit attaches to the provision of affordable housing as part of a development that does not otherwise accord with the Local Plan. I accept the appellant's point that economic benefits would attach to each of the three development proposals, in terms of the New Homes Bonus and employment opportunities during the construction period, but share the Council's view that the new houses would be

unlikely to make a significant difference to the operation of the village shop. Given the limited and temporary nature of the economic benefits, I afford them only very limited weight.

41. Drawing all of this together, I find that even if appropriately worded conditions and planning obligations were put in place to resolve the conflict with all other Development Plan policies identified by the Council, in all three cases, there are no material considerations sufficient to outweigh the remaining conflict with Policies CP1 and CP2 of the Local Plan.
42. Since I have found that planning permission should be refused even if the submitted S.106 Undertakings met all of the relevant statutory requirements, it is not necessary to go on to assess whether or not those Undertakings do in fact fulfil those requirements.
43. I conclude that for the reasons set out above, APPEAL APPEAL B and APPEAL C should each be dismissed.

Jessica Graham

PLANNING INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr A Penna BA(Hons) MA MRTPI	Managing Director, AP Planning
Mr R Winstone BA(Hons)	Bristol Developments Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Mr O Marigold BSc DipTP MRTPI	Principal Planning Officer
Mr A Sestini BTP	Senior Planning Policy Officer
Mr C Brinkman	Highway Authority, Somerset County Council

INTERESTED PERSONS:

Ms J North	Mr J Kingman
Mr T Evans	Mr R Moon
Mr J Butterford	Cllr R Carter
Ms Garfield	Ms C Foster
Ms V Moon	Ms J Porter
Mr J Tapper	Mr P Sinclair
Ms S Young	Mr C Hill
Ms C Hill	Mr G Kingham
Ms B Kingham	Mr R Coombes
Ms S Coombes	Ms S Wait
Mr G Wait	Mr M Rigby
Mr F Burge	Ms S Rankine
Mr D Netherwood	Mr J Pike
Ms J Gardiner	Ms S Andrews
Mr A Rankine	Mr B Kissane
Mr D Aldridge	Mr J Carter
Mr M Stanfold	Ms L Hunt
Mr M Hunt	Mr R Morgan
Mr R Rogers	

DOCUMENTS SUBMITTED AT THE HEARING:

- 1 Copy of Council's notification lists for the hearing
- 2 List of appearances for the appellant
- 3 Inspector's Report on the Examination of the Mendip District Local Plan Part 1
- 4 Mendip District: Statement on 5 Year Housing Land Supply, by the Council
- 5 Housing Delivery Evidence October 2014, produced by the Council
- 6 Mendip Housing Trajectory, produced by the Council
- 7 Mendip Local Plan Part 1: Proposed Main Modifications
- 8 Copy of submissions made by Ms J Gardiner
- 9 Extract from 2011 SHLAA identifying sites in Chilcompton
- 10 Plan showing Public Rights Of Way in the vicinity of Parsonage Lane
- 11 Copy of the Chilcompton Village Plan 2013
- 12 Draft S.106 Undertakings in respect of each of the 3 appeal sites, submitted by the appellant
- 13 Copy of the Council's application for an award of costs against the appellant

DOCUMENTS SUBMITTED AFTER THE HEARING:

- 14 Council's comments on the appellant's S.106 Undertakings
- 15 Executed S.106 Undertakings in respect of each of the 3 appeal sites, submitted by the appellant.