
Appeal Decision

Site visit made on 23 November 2020

by S. Rennie BSc (Hons), BA (Hons), MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 January 2021

Appeal Ref: APP/Q3305/W/20/3257811

Land at Sestri, Broadway, Chilcompton, Somerset BA3 4JW

- 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 (Flower and Hayes Developments Ltd) against Mendip District Council.
 - The application Ref 2020/0582/OTA is dated 10 March 2020.
 - The development proposed is for outline planning permission (all matters reserved) for the erection of a residential development of up to 10 dwellings.
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Decision

1. The appeal is dismissed.

Main Issues

2. The planning application was not determined by the Council before it was appealed. From the Council's Appeal Statement of Case and all the other evidence submitted I would regard the main issues as being the effects of the development on (1) the character and appearance of the area; (2) the living conditions of future occupiers and neighbours to the site; (3) parking provision and highway safety; (4) flood risk in the area of the site; and (5) whether the development would make an adequate provision for education, affordable housing, public open space, sustainable urban drainage and/or sustainable transport measures, to mitigate the impacts of the proposed residential development.

Procedural Matters

3. The appeal seeks outline permission with all matters reserved. In so far as the submitted plans and drawings show details of the proposals, I have treated these as being illustrative.

Reasons

Character and Appearance

4. The site is a paddock to the west (side) of Sestri and to the south (rear) of three properties that front Broadway, which are known as Davmor, Ferncourt and Westholm. All these properties, like many along the southern side of this section of Broadway near the site in particular, are two storey dwellings set in spacious plots.

5. There is already consent to develop the plot of Sestri under planning permission 2018/3008/FUL for up to seven dwellings, although there was previous outline permission for up to eight dwellings (2015/2873/OTS). This proposal would join with this consented scheme (although not implemented at the time of the site visit) to form up to ten additional dwellings.
6. The proposal is for up to ten dwellings, but the illustrative layout shows only eight detached dwellings. None appear to be semi-detached. As such, this layout plan shows less dwellings than could be built if the development was allowed. As the proposal is for up to ten dwellings then it is appropriate that I consider the possibility of ten dwellings being constructed if allowed.
7. Currently, the illustrative layout plan shows dwellings set within plots smaller than many existing plots containing dwellings in the area, but it would be comparable to the consented development at Sestri for example. However, a further two dwellings in this site would make the layout much more cramped than currently shown, especially as the appellant is only including detached dwellings.
8. It is acknowledged that this is only an illustrative layout, but it is the only evidence before me of how a development as proposed could appear with a layout within this context. Ten dwellings could be achieved on this site, but I am not convinced this could be done without resulting in an overly cramped layout when considered against the context of the neighbouring relatively spacious plots, especially those on the southern side of Broadway. This would be exacerbated if there was any open space or some form of drainage attenuation on site, which would further reduce the developable space for new dwellings and their plots. On this point I note that the appellant is proposing an off-site contribution for public open space, but policy DP16 of the Local Plan looks to secure on-site provision where appropriate.
9. If ten dwellings were to be built at this site it is my judgement that this would result in an overdevelopment of the site with a housing development which would not appropriately reflect the existing residential layout in the vicinity of the site. This issue would be exacerbated if on-site above-ground drainage infrastructure and/or open space areas were incorporated. Whilst it would be an efficient use of the site for housing it would be harmful from a design and visual impact perspective, with the development of possibly ten dwellings on this site appearing cramped. The lack of an illustrative plan to show how ten dwellings would appear at the site means that there is a lack of evidence from the appellant to demonstrate how such a scheme could be achieved without resulting in such a cramped layout.
10. The development would be seen against the backdrop of the village and a residential development on this site would not be harmful to the wider rural landscape. However, this is likely to be housing which would be apparent from more localised views as being cramped within the confines of the site if ten dwellings were to be developed, even considering the regular shape of the site.
11. As such, it is my conclusion, from the evidence provided, that a proposal that would result in potentially ten dwellings on site, together with all other potential associated aspects of the development such as sustainable urban drainage systems (SUDS) and open space, would be harmful to the character and appearance of the area. Therefore, the development would be contrary to policies DP1 and DP7 of the Mendip District Local Plan Part 1: Strategy and

Policies 2006 - 2029 (adopted 15th December 2014). These policies require development to contribute positively to the maintenance and enhancement of local identity and distinctiveness; and be of a scale, mass, form and layout appropriate to the local context, amongst other things.

Parking Provision/Highway Safety

12. Whilst the proposal would be restricted if ten dwellings were built in terms of space, I am not convinced that there would be issues relating to parking provision and highway safety. It could be that the internal roads would be much the same as indicated with the submitted plan, but that the dwellings would be at a higher density. On this basis, a suitable road network with turning space and parking provision could be achieved.
13. Therefore, on this issue I do not conclude that the proposal would be contrary to policies DP9 and DP10, which relate to transport impacts and parking standards.

Living Conditions

14. Having ten dwellings within this site would likely result in dwellings close to each other within the site, and maybe even new dwellings near the boundaries of existing houses. However, whilst this has the potential to increase impacts to the living conditions of both future occupants and existing neighbours to the site, in terms of overshadowing or overlooking for example, this is not necessarily the case. The final design with the reserved matters could sufficiently account for these issues and also provide sufficient amenity space for the new dwellings such that there would be no harm to living conditions.
15. On this basis, at this outline stage, I have no reason to conclude that the proposal would be harmful to living conditions or conflict with policy DP7 of the Mendip District Local Plan in this regard. This policy requires that developments protect the amenity of users of neighbouring buildings and land uses, and provide a satisfactory environment for current and future occupants, amongst other things.

Site Drainage

16. The appeal submission includes a 'Soakaway Test Report' and a cover letter to address the issue of drainage and flood risk. This confirms that the site is "located within 'Flood Zone 1' and is not known to be susceptible to flooding from pluvial, groundwater, infrastructure or artificial sources."
17. The accompanying letter also states that there would be a surface water management plan to accommodate a suitable rate of runoff from the site, taking into account climate change.
18. In terms of drainage, this letter states that this would be achieved by a variety of soakaway features, some 'on-plot' but with communal also, although there is no detail at this outline stage. However, the infiltration tests have all been undertaken on the Sestri plot and not on the site itself. While these tests have shown that soakaways are a possible form of SUDS, this is not necessarily the case for the site itself. Indeed, I note that the Local Lead Flooding Authority (LLFA) stated that "*Due to the varying results, the applicant should ensure that the results used are representative of the soakaway locations, especially, in the areas of plot soakaways and highway soakaway.*" The LLFA also raise some

other aspects of the tests and information submitted which they regard as not adequate.

19. Therefore, whilst the appellant may judge it to be likely that soakaways would be effective on the site of this proposed development on the paddock, this is not definitely the case based on the evidence before me. If soakaways cannot be used then some alternative would have to be found which may have consequences for the development and its layout. There may be need for more above ground SUDs infrastructure which may restrict the number of units that can appropriately be delivered on this site for example, as set out in the main issue above.
20. I do not regard it as appropriate that this information be required by condition as it has a potential impact on the quantum of development achievable at the site. Furthermore, as is apparent from some of the submissions by interested parties there has been an issue with flooding in the area in the past.
21. As such, whilst full details would not be required at this outline stage, there is still a lack of evidence of a suitable and viable drainage scheme for this site and the proposed housing, to ensure against flooding elsewhere as a consequence of the development. The proposal is therefore contrary to saved policies DP23 of the Mendip District Local Plan Part 1: Strategy and Policies 2006 - 2029 (adopted 15th December 2014), which relates to incorporating appropriate water management measures to reduce surface water run-off and ensure that it does not increase flood risk elsewhere, amongst other things.

Provision of suitable Planning Obligations to mitigate the impact of the proposed development

22. Since this appeal, the appellant has submitted a revised S106 legal agreement, signed November 2020. It responds to the Council statement regarding the lack of certain obligations in the originally submitted agreement.
23. The submitted revised legal agreement includes obligations for 30% affordable housing (with an 80/20 split in favour of social rented housing tenure), together with an education contribution. Also included in this revised legal agreement is an obligation to provide SUDs management, a residential travel plan, a contribution towards an off-site multi-use games area (MUGA) and a contribution towards off-site public open space (POS).
24. There is no substantive response from the Council regarding the submitted unilateral undertaking. However, based on the evidence before me, other than the public open space, all other aspects of the legal agreement are in accordance with planning policy. As such, for all those aspects not related to POS, I consider that the provisions of the agreement are directly related to the proposed development, fairly and reasonably related in scale and kind, and would be necessary to make it acceptable. They meet the tests set out in paragraph 56 of the National Planning Policy Framework (the Framework), the Planning Practice Guidance and the Community Infrastructure Levy Regulations 2010.
25. However, policy DP16 of the Mendip District Local Plan Part 1: Strategy and Policies, which is entitled Open Space and Green Infrastructure, states that *"Where appropriate, the required open space contribution will take the form of on-site provision."* Whilst the Council appear to accept an off-site contribution

towards the MUGA, they state that the proposal would still be expected to provide 0.05ha of open space on site. This is unless the appellant could demonstrate that the POS would be better provided off site.

26. The appellant proposes an off-site contribution with no on-site provision formally included with the legal agreement or shown on the indicative layout plan. Furthermore, there is no substantive evidence provided to explain why it cannot be provided on site. Clearly, the provision of on-site open space would impinge on how many units could be delivered on site, although this is the same for most larger scale residential developments with there being advantages for on-site provision. Such advantages include making the development more physically attractive and also more enjoyable places to live in, as described by the supporting text to policy DP16. Furthermore, the Framework advises that the provision of open space contributes positively to the social objective of sustainable development.
27. As such, the submitted legal agreement would accord with policies DP9, DP11, and DP23, but would conflict with policy DP16 and DP19 of the Mendip District Local Plan Part 1: Strategy and Policies 2006 – 2029. This is because the proposal would not provide on-site public open space to a satisfactory level, whilst not providing sufficient evidence why this could not be achieved or why it would be preferable off-site.

Planning Balance

28. The Council has acknowledged that it cannot demonstrate a 5 year housing land supply. Paragraph 11 of the Framework sets out that decisions should apply a presumption in favour of sustainable development and that, under criterion d) where the policies which are most important for determining the application are out of date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. Given the lack of a five year housing land supply, paragraph 11 d) of the Framework is engaged. The degree of shortfall has also been taken into consideration with this balance.
29. The proposal would provide up to ten dwellings towards the local housing supply on a 'windfall' site (with the associated New Homes Bonus), on land adjacent to a sustainable village and in an accessible location. There would be economic benefits from the construction of the dwellings and from new occupants supporting the local community and its businesses. The appellant has committed to providing well designed homes. The development could also be considered an efficient use of the site. Considering all the benefits raised, the potential of up to ten dwellings as proposed would cumulatively have benefits of modest weight.
30. Weighing against the proposal, the development of up to ten dwellings on this site would harm the character and appearance of the area. The proposal would also fail to provide sufficient detail of a suitable drainage strategy. Furthermore, the development would fail to provide an appropriate level of on-site open space, with a lack of justification for an alternative off-site provision instead. These issues would result in the proposal conflicting with some of the aims and objectives of the Framework, particularly those contained in Chapter 12 (Achieving well-designed places), Chapter 8 (Promoting healthy and safe

communities) and Chapter 14 (Meeting the challenge of climate change, flooding and coastal change).

31. Considering all the above, when assessed against the policies in the Framework taken as a whole, the adverse impacts as set out in the main issues would significantly and demonstrably outweigh these cumulative benefits.

Conclusion

32. For the reasons given and in considering all matters raised, the appeal should be dismissed.

Steven Rennie

INSPECTOR