



Appeal Decision

Site visit made on 7 December 2021

by Mr A Spencer-Peet BSc(Hons) PGDip.LP Solicitor (Non Practising)

an Inspector appointed by the Secretary of State

Decision date: 03 March 2022

Appeal Ref: APP/Q3305/W/21/3279580

Sestri, Broadway, Chilcompton, Radstock BA3 4JW

- 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 Flower & Hayes Developments Ltd against the decision of Mendip District Council.
 - The application Ref 2021/0676/OTA, dated 23 March 2021, was refused by notice dated 21 July 2021.
 - The development proposed is described as an application for outline planning permission (all matters reserved) for the erection of a residential development of up to 6 no. dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in outline with all matters reserved for later consideration. The details submitted include an indicative site layout. Whilst not formally part of the scheme, I have nevertheless treated these details as a useful guide as to how the site might be developed. I have considered the appeal on that basis.

Main Issues

3. The main issues in this appeal are:
 - Whether or not the proposed development would make adequate provision for affordable housing, public open space and a travel plan, and in respect of contributions towards infrastructure; and,
 - The effect of the proposed development on protected species and protected habitats.

Reasons

Appeal Site

4. The appeal site comprises part of an existing property and the adjoining land which at the time of my visit appeared to be in use as a paddock. The appeal site also includes a number of modestly sized outbuildings. The evidence before me indicates that the appeal site is located outside of, but adjacent to, the settlement boundary for Chilcompton. Policy CP1 of the Mendip District Local Plan Part 1: Strategy and Policies (2014) (the Local Plan) identifies Chilcompton as a Primary Village on the basis that it offers key community

facilities (including the best available public transport services) and some employment opportunities, making them 'best placed to accommodate most rural development'.

Planning Obligation

5. Policy DP9 of the Local Plan provides that, at locations such as Chilcompton, development proposals must demonstrate how they will improve or maximise the use of sustainable forms of transport, including the submission of Travel Plans. Policy DP11 of the Local Plan addresses affordable housing and states that on residential developments of 7 or more dwellings, or sites of a size greater than 0.25 hectares, on-site provision of affordable housing (or a combination of on-site provision together with a development contribution) is required, or the payment of a commuted sum in lieu of equivalent on-site provision on sites below 0.25 hectares or providing up to 6 new homes.
6. Policy DP16 of the Local Plan requires that all new residential development will contribute towards new open space to meet the needs of the growing population, and which provides, through the Mendip Open Space Study, that provision of new open space required by development is based on the standard of 2.4 hectares per additional 1000 residents using a projected household density of 2.1 persons per household. Policy DP19 of the Local Plan indicates that the Council will support the delivery of local infrastructure in line with new development and mitigate and compensate for the effects that new development may have. Development such as the appeal scheme which would be subject to the Community Infrastructure Levy, are required to pay a one-off per square metre charge.
7. During the course of the appeal, the Appellant has submitted an executed and dated unilateral undertaking which, it is maintained, provides the necessary provision of affordable housing, public open space, financial contributions towards education and an off-site multi-use games area (MUGA), and a travel plan in relation to the appeal scheme.
8. Nonetheless, at the heart of this matter is whether the planning obligations should apply to this scheme alone or whether the relevant planning obligations should apply to the proposed development in combination with other residential development for 7 dwellings that has recently been permitted by the Council on adjoining land at Sestri¹ (the Permitted Scheme) for the purposes of calculating affordable housing provision, travel plans and contributions towards infrastructure. The evidence before me indicates that whilst the Permitted Scheme provides 7 new dwellings on a site greater in size than 0.25 hectares, no affordable housing was provided in relation to that scheme. This was because of the exemption set out by the Government not requiring affordable housing on schemes of that size.
9. In essence I consider this issue revolves around whether or not the appeal proposal should be treated as part of the recently approved Permitted Scheme, with the two developments being assessed as a single planning development with regards to the abovementioned obligations. The main parties in this appeal refer to case law on this point².

¹ Local Planning Authority Reference: 2018/3008/FUL

² New Dawn Homes Ltd v SoSCLG and Tewkesbury BC [2016] EWHC 3314 (Admin), and R(Westminster City Council v First Secretary of State and Brandlford Limited [2003]JPL 1066).

10. With regards to the question of whether the two developments could be considered to form part of a single larger development, the cited case law provides three criteria which can be used in determining whether a proposal constitutes a phased development of a larger scheme. Whilst the three criteria referred to within these judgements can be a useful guide, it is a matter of judgement based on the evidence of that case, as to whether a proposal constitutes an extension or later phase to another development.
11. The appeal proposal and the Permitted Scheme would be located immediately adjacent to each other, would share the same access point onto the B3139 highway and would share an internal access road. The evidence before me indicates that the appeal site and the land associated with the Permitted Scheme are in the same ownership. Whilst I saw on my visit that the building at Sestri had not been demolished and that little if any above ground works were visible, the Appellant's submissions indicate that development of the Permitted Scheme has commenced. This has not been disputed by the Council within their statements.
12. In my view, based on the evidence before me and observations made on my site visit, I find that the appeal proposal should be regarded as part of or a continuation of the Permitted Scheme. Consequently, it is reasonable to consider the appeal site forming part of a larger development, in combination with the development of seven dwellings comprising the Permitted Scheme, for the purposes of affordable housing, travel plans, public open space and financial contributions towards infrastructure. A combined development of up to thirteen units would generate such affordable housing and infrastructure requirements and there is nothing in Policies DP9, DP11, DP16 or DP19, which suggests that the consideration of sites should be limited to the extent of a red line boundary.
13. The Appellant has put it to me that the two developments should be considered to be separate matters. It is noted that the two applications were not made at the same time, and that development of the Permitted Scheme has commenced. Whilst these matters are acknowledged, based on the evidence before me and given the above reasons, in my view it is difficult to see the appeal proposal and the Permitted Scheme as being other than different phases of the same development. Furthermore, the inclusion of a combined gross floorspace affordable housing condition that was attached to the Permitted Scheme would not alter the position with regards to whether the two schemes could be considered together as a whole.
14. Whilst I acknowledge the Appellant's frustrations that the matter of whether the two developments should be considered together was not raised by the Council in relation to a recent appeal which concerned development at the appeal site³, it does not appear that such matters were before the appointed Inspector to consider. I have therefore determined this matter on its own merits and on the basis of the evidence before me.
15. The Appellant's submitted unilateral undertaking includes areas of public open space within the appeal site and which, the evidence before me indicates, would meet the requirements for such space for the combined Permitted Scheme and the appeal proposal. The obligation includes details of the management and maintenance of this open space, with the details of the layout

³ Appeal Reference: APP/Q3305/W/20/3257811

and management of the space to be approved by the Council. Given that the public open space to be provided would reflect that which would be required for a combined scheme of up to thirteen dwellings, I find no conflict with Policy DP16 of the Local Plan with regards to the provision of public open space.

16. With regards to the appeal scheme for up to six dwellings, the submitted unilateral undertaking includes provision of affordable housing, financial contributions towards education and the MUGA, and a travel plan. However, for the above reasons, the appeal scheme does form part of a larger residential development, and therefore should make provision for affordable housing, travel plans, and financial contributions towards infrastructure calculated on the basis of up to thirteen dwellings. The submitted unilateral undertaking does not provide for these matters and, in the absence of any suitable mechanism to provide them, the appeal proposal conflicts with Policies DP9, DP11 and DP19 of the Local Plan.

Protected Species & Protected Habitats

17. Policy DP5 of the Local Plan sets out that, amongst other aspects, proposals with the potential to cause adverse impacts on protected and/or priority species or habitats will be resisted. Policy DP6 of the Local Plan concerns Bat protection and requires that applicants must provide all necessary information to enable compliance with the Habitats Regulations, including any necessary survey work, reports and mitigation measures. Paragraph 99 of Circular 06/2005⁴ advises that the presence of protected species and the effect new development might have on them, should be established before planning permission is granted.
18. The Council's ecological advisors raised a number of concerns regarding the amount of information provided by the Appellant in support of the planning application with regards to protected species. However, during the course of the appeal, the Appellant has provided further information to the Council and which the Council's ecological advisors have considered. In relation to reptiles and roosting bats, the Council has confirmed that sufficient information has been provided by the Appellant and that the proposed mitigation strategies put forward by the Appellant are considered to be acceptable subject to the application of appropriate planning conditions to be attached in the event that the appeal was allowed.
19. However, the Council's ecological advisors maintain that insufficient information relating to the potential impacts upon the favourable conservation status of protected species and the Mells Valley Special Area of Conservation (the SAC), has been provided by the Appellant. The site lies within a Bat Consultation Zone of the SAC which is designated for its greater horseshoe bat feature.
20. Lighting from the proposed dwellings could disturb bat flight paths and there could be further disturbance during the construction phase. Whilst acknowledging that the planning application is in outline with all matters reserved for later consideration, landscaping and changes to boundary vegetation could lead to a reduction in the amount of foraging habitat. Accordingly, and taking a precautionary approach, the proposal would have the potential to have significant effects on the conservation objectives of the SAC.

⁴ Biodiversity and Geological Conservation – Statutory Obligations and their impact within the planning system.

21. The Conservation of Habitats and Species Regulations 2017 requires that the decision maker to undertake an Appropriate Assessment where there are likely significant effects from the proposed development, either alone or in combination with other developments.
22. In respect of the Appropriate Assessment and whilst noting the concerns of the Council's ecological advisors with regards to bat activity surveys, Natural England have confirmed to me sufficient information and activity surveys have been provided by the Appellant to make reliable judgements about the effects of the appeal scheme upon the SAC. Natural England have confirmed that, given the existing hedgerow is to be retained and that further planned planting of a new hedge, shrubs and trees are to be provided, the Appellant's proposed mitigation measures would be sufficient to avoid an adverse impact on the integrity of the SAC. Natural England also confirmed to me that the proposed use of low level lighting, which can be secured by planning condition, would be welcomed.
23. In conclusion of this main issue, Natural England have advised that there would be no adverse effects on the integrity of the SAC, subject to the relevant mitigation measures being secured by planning conditions. Furthermore, Natural England have confirmed that the low level lighting for the appeal scheme, which could be secured by planning condition, would be sufficient to avoid light spill into adjacent habitats and roost sites. On that basis, I am content that the appeal scheme would have no adverse effect on the integrity of the protected site or on protected species.
24. For the above reasons, I find that the appeal scheme would comply with the aims and requirements of Policies DP5 and DP6 of the Local Plan and would accord with the provisions of the National Planning Policy Framework (the Framework).

Other Matters

25. Interested parties raise several additional objections to the proposal including potential loss of privacy, disturbance, drainage, effect on local services and highway safety. These are all important matters and I have taken into account all of the evidence before me. However, given my findings in relation to the main issues above, these are not matters that have been critical to my decision.

Planning Balance and Conclusion

26. It is common ground between the main parties that the Council are currently unable to demonstrate a five year housing land supply. The evidence indicates that there is a substantial shortfall in housing land supply with the Council's Officer report confirming that the Council can demonstrate 3.5 years of supply. In the absence of a five year supply of housing, the Framework provides that relevant policies for the supply of housing should not be considered up to date, and further states that where the development plan is out of date, 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.
27. In the context of the objectives of sustainable development identified in the Framework, the appeal scheme would provide limited benefits in terms of

employment opportunities during the construction phase and through the spend of future residents within local businesses. The proposal would provide further benefits in terms of the contribution towards housing supply, including the provision of two affordable dwellings, with the proposal being located within a rural area which provides convenient access to services and facilities. I attach moderate weight to these benefits in the determination of this appeal by reason of the scale of the proposed development.

28. Whilst I have found no harm in relation to protected species or protected habitats, for the reasons given above I have concluded that the appeal proposal should be considered together with the Permitted Scheme. In this regard, the combined developments would not provide sufficient levels of affordable housing or an adequate travel plan, and would not provide the required financial contributions towards infrastructure.
29. As such, the appeal scheme would conflict with the provisions of the Framework with regards to enabling and supporting healthy lifestyles, delivery of a sufficient supply of homes and would fail to accord with the requirement that, at locations such as Chilcompton, planning decisions should be responsive to local circumstances and support housing developments that reflect local needs. In my view, these adverse impacts of the appeal proposal significantly and demonstrably outweigh the benefits of the scheme when assessed against the policies of the Framework when taken as a whole.
30. For the reasons given above I conclude that the appeal should be dismissed.

Mr A Spencer-Peet

INSPECTOR