The Planning Inspectorate

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Planning Appeals
Wiltshire Council
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Your Ref: PL/2022/09773
Our Ref: APP/Y3940/W/23/3330141

05 April 2024

Dear Sir/Madam,

Town and Country Planning Act 1990
Appeal by Mr William McMyn
Site Address: 8 Sutton Lane, Sutton Benger, CHIPPENHAM, SN15 4RU

I enclose a copy of our Inspector's decision on the above appeal(s), together with a copy of the decision on an application for an award of costs.

If you wish to learn more about how an appeal decision or related cost decision may be challenged, or to give feedback or raise complaint about the way we handled the appeal(s), you may wish to visit our "Feedback & Complaints" webpage at https://www.gov.uk/government/organisations/planning-inspectorate/about/complaints-procedure.

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Guidance on Awards of costs, including how the amount of costs can be settled, can be located following the Planning Practice Guidance.

http://planningguidance.communities.gov.uk/blog/guidance/appeals/how-to-make-an-application-for-an-award-of-costs/

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Thank you in advance for taking the time to provide us with valuable feedback.

Yours sincerely,

Sara Burke
Sara Burke

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The Planning Inspectorate

Appeal Decision

Site visit made on 28 February 2024

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 APRIL 2024

Appeal Ref: APP/Y3940/W/23/3330141
8 Sutton Lane, Sutton Benger, Wiltshire SN15 4RU

- 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 William McMyn against the decision of Wiltshire Council.
- The application Ref is PL/2022/09773.
- The development proposed is erection of 2 No. dwellings with detached garages and associated ancillary development.

Decision

1. The appeal is dismissed.

Application for costs

2. The appellant made an application for costs. This application for costs has been dealt with in a separate decision.

Main Issue

3. The main issue is whether the proposed dwellings would be in a suitable location, having particular regard to the Council's spatial development strategy for the area and the accessibility of services and facilities.

Reasons

4. The appeal site comprises an area of garden land associated with 8 Sutton Lane in Sutton Benger. The site lies outside of the settlement boundary for Sutton Benger. Core Policies 1, 2, and 10 of the Core Strategy (adopted 2015) (Core Strategy) set out the relevant settlement strategy for the area, with Core Policy 2 providing that, amongst other things, other than in circumstances as permitted by other policies within the Core Strategy, identified in paragraph 4.25 of the Core Strategy, development will not be permitted outside the limits of development. It is common ground between the main parties that the proposed development would not accord with any of the exception policies listed at paragraph 4.25 of the Core Strategy.

5. Furthermore, the proposed development is not one of the development types listed in Policy H4 of the North Wiltshire Local Plan 2011 (adopted 2006) relating to permitted residential development in the open countryside. Taking all of the above into account, it is clear that the proposed development would not be in a suitable location, according to the Council's spatial development strategy for the area.

6. Sutton Benger is classed as a 'large village' in the Core Strategy. These are defined in Core Policy 1 as settlements with a limited range of employment, services and facilities. In this regard, I note that Sutton Benger benefits from a

primary school, a village hall, a church, recreational facilities, a public house, a restaurant, a post office and a doctor's surgery. I note that a new footway link is due to be constructed along Sutton Lane, which will enhance pedestrian accessibility to the core of the village.

7. Conversely, I have not been referred to a secondary school, nor to any specific food shopping or employment destinations within Sutton Benger. The future residents of the proposed dwellings would therefore likely be required to travel further afield, beyond Sutton Benger, to access some of the essential facilities required for day-to-day living.

8. In this regard, the site is within walking distance of bus stops. However, whilst bus services to Chippenham and Malmesbury have been highlighted by the appellant, it has not been stated that these services run into the evening. Chippenham and Malmesbury are both within cycling distance of the site.

9. Considering the above, I concur with the appellant that notwithstanding the site's accessibility to local services, a reasonable proportion of trips to and from the site are likely to be by car, given its village location, and that the proposed development does not wholly accord with Core Policies 60 and 61 of the Core Strategy in relation to reducing the need to travel by car.

10. I therefore find that the proposed dwellings would not be in a suitable location, having particular regard to the Council's spatial development strategy for the area and the accessibility of services and facilities. It would conflict with Core Policies 1, 2, and 10 of the Core Strategy which collectively set out the Council's spatial development strategy for the area. It would conflict with part i. of Core Policy 60 of the Core Strategy which provides that the Council's sustainable transport strategy will be achieved by, amongst other things, planning developments in accessible locations, and with Core Policy 61 of the Core Strategy which provides that, amongst other things, new development should be located and designed to reduce the need to travel particularly by private car, and to encourage the use of sustainable transport alternatives.

11. The proposed development would also conflict with chapter 9 of the National Planning Policy Framework (the Framework) which seeks to promote sustainable transport.

Other Matters

12. The Council did not refuse the application on matters relating to the character and appearance of the area, the living conditions of the future occupiers of the proposed dwellings, the living conditions of nearby occupiers, flood risk, highway safety, access, parking, trees, ecology, or the setting of the Sutton Benger Conservation Area. However, even if I were to likewise reason that the proposed development would be in compliance with the development plan and the Framework in these respects, these would be neutral factors rather than ones which weigh positively in favour of the proposed development.

Planning Balance

Whether the most important policies are out-of-date

13. I have carefully considered the facts highlighted by the appellant in relation to whether the policies which are most important for determining the appeal are out-of-date. These are the policies referred to in the main issue above.

14. I note the age of the Core Strategy, that it is underpinned by historic housing need / supply data, and that a review of the development plan is ongoing. These facts must be considered through the lens of paragraph 225 of the Framework which provides that, amongst other things, existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework, and that due weight should be given to them, according to their degree of consistency with the Framework.

15. In this regard, the Core Strategy's use of a Settlement Strategy and a Delivery Strategy, which, as mentioned in paragraph 4.6 of the Core Strategy, seeks to define where development will be the most sustainable across Wiltshire's settlements, is in conformity with paragraph 60 of the Framework which provides that, amongst other things, to support the Government's objective of significantly boosting the supply of homes, it is important that a sufficient amount and variety of land can come forward where it is needed. Similarly, Core Policies 60 and 61 of the Core Strategy broadly conform to the Framework's aspirations in terms of promoting sustainable transport.

16. Moreover, a review of a development plan is a normal part of the strategic planning process. It does not mean that the policies within the development plan are necessarily out-of-date.

17. In recent years the Council has been unable to demonstrate a 5-year supply of deliverable housing sites, which resulted in the Council producing Briefing Note No. 22-09[1], which states at paragraph 6.1(iii) that the Council will positively consider speculative applications where there are no major policy obstacles material to the decision other than a site being outside settlement boundaries or unallocated. Subsequently, the Inspector in appeal decision Ref APP/Y3940/W/22/3312268, issued in May 2023, found that the Council did not have a plan-led approach to addressing the housing shortfalls which have been below the minimum level of supply since April 2018.

18. Even so, the policy approach expressed in paragraph 6.1(iii) of Briefing Note No. 22-09 is of much less relevance now that the Framework has been updated, with paragraph 77 of the Framework being engaged due to the Council having an emerging local plan at Regulation 19 stage, as are the Inspector's findings in appeal decision Ref APP/Y3940/W/22/3312268. Furthermore, the Council's supply of deliverable housing sites is presently in conformity with the Framework, notwithstanding the fact that the Core Strategy is predicated on historic data. Also, the latest Housing Delivery Test results place the Council in the 'no consequences' category.

19. As such, it is not the case that the policies of the development plan, and in particular Core Policy 2 of the Core Strategy which places restrictions on what development will be permitted outside the limits of development, have unduly restricted the delivery of housing, when considered against the present-day requirements of national planning policy. The fact that the Housing Land Supply Position Statement will need to be updated following the new provisions introduced within the revised Framework is not a factor that alters these findings.

20. The extent of the settlement boundary for Sutton Benger is a matter for consideration as part of the normal forward-planning process. Although I note

[1] 5 Year Housing Land Supply and Housing Delivery Test: Briefing Note No. 22-09 (April 2022) (Wiltshire Council)

that it has been said that the settlement boundary for Sutton Benger does not reflect the current extent of the village, including nearby developments that are being built-out, it is not my role in determining this appeal to speculate as to whether the settlement boundary would, or should, be altered as part of that process.

21. In any event, whilst the newly-approved residential developments shown in Figure 4 of the appellant's appeal statement are within walking distance of the site, it is not the case that the site will be surrounded by residential development on all sides once they are built-out. Rather, Figure 4 shows large areas of land to the north, south, and west as remaining undeveloped. Hence, taking account of these recent approvals, I consider that a significant change in circumstances on the ground has not occurred.

22. Taking all of the above into account, it cannot be said that the policies which are most important for determining this appeal are in any way inconsistent with the Framework or that they have been overtaken on the ground as a matter of fact. As a matter of planning judgement I therefore find that the policies which are most important for determining this appeal are not in substance out-of-date, nor are they out-of-date for the purposes of paragraph 11 d) ii. of the Framework. For the above-mentioned reasons, these policies have been accorded full weight in the determination of this appeal.

Adverse impacts

23. The Framework provides at paragraph 15 that, amongst other things, the planning system should be genuinely plan-led. In relation to this, paragraph 4.15 of the Core Strategy provides that, amongst other things, development outside the settlement boundary will be strictly controlled.

24. Paragraph 6.155 of the Core Strategy also stresses that planning developments in locations that are, or can be made, accessible means that communities can access their needs (e.g. shops, schools and employment) easily and without always needing a car. Whilst, considering the facts identified on the main issue, the occupiers of the proposed dwellings would likely be partially reliant on private vehicles to access certain services and facilities required for day-to-day living, I am mindful that paragraph 109 of the Framework provides that, amongst other things, opportunities to maximise sustainable transport solutions will vary between urban and rural areas.

25. In summary, taking all of the above into account, and noting the findings of the Inspector in appeal decision Ref APP/Y3940/W/21/3285458 relating to residential development directly opposite the appeal site, moderate weight is given to the collective adverse impacts arising from the proposed development's failure to accord with Council's spatial development strategy for the area and the unsuitability of the site's location with respect to the accessibility of services and facilities.

Benefits

26. The proposed development would make an effective use of land that is in established residential use, and would provide a minimal contribution to the Government's objective of significantly boosting the supply of homes (mentioned at paragraph 60 of the Framework). Work for construction professionals would be created during the construction phase and construction-

related economic benefits may arise through use of the local supply chain. The future occupiers of the proposed dwellings would also likely contribute to the vitality of Sutton Benger. In this regard, paragraph 83 of the Framework provides that, amongst other things, to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities.

27. The proposed biodiversity enhancement measures (including new native species hedgerows and bird boxes), which could be secured by conditions, would likely provide a minimal net gain for biodiversity. As the proposed dwellings would be built using low carbon principles, they would assist in meeting the challenge of climate change, which is promoted by chapter 14 of the Framework.

28. The above-mentioned benefits of the proposed development would be in compliance with a number of policies in the development plan and the Framework, but the scale of these benefits would be commensurate with the minimal quantum of development proposed, of 2 new dwellings only. Little weight has therefore been given to the benefits arising from these considerations.

Paragraph 11 d) ii. of the Framework

29. As mentioned above, the Council has an emerging local plan at Regulation 19 stage, meaning that paragraph 77 of the Framework is engaged, which requires the Council to identify and update annually a supply of specific deliverable sites sufficient to provide a minimum of 4 years' worth of housing.

30. In this regard, although the Inspector in appeal decision Ref APP/Y3940/W/23/3324031 cast doubt as to whether the Council could demonstrate a 4-year supply of deliverable housing sites, the Inspector did not offer a definitive view on this point. In appeal decision Ref APP/Y3940/W/21/3285428 and appeal decision Ref APP/Y3940/W/22/3312268, each Inspector referred to figures which were within the 4 to 5 years range. Moreover, the Inspector in appeal decision Ref APP/Y3940/W/23/3323540, issued in January 2024, found that they had no reason to disagree with the Council that they had a 4.6-years supply of deliverable housing sites.

31. Therefore, whilst I note that in recent years the Council's published figures have been successfully challenged at the appeal stage, on a balance of probabilities it appears that the Council is likely to presently have at least a 4-year supply of deliverable housing sites, as required by paragraph 77 of the Framework.

32. Taking all of the above into account, I find that paragraph 11 d) ii. of the Framework is not engaged. Accordingly, the proposed development would not benefit from the presumption in favour of sustainable development, detailed in the Framework.

Balancing of considerations

33. Appeal decision Ref APP/Y3940/W/21/3285458 and appeal decision Ref APP/Y3940/W/22/3292118 related to development proposals involving significantly more dwellings than is proposed in this appeal, resulting in greater positive impacts in social and economic terms.

34. Additionally, whilst in both of those appeal decisions harm was found to arise in relation to the character and appearance of the area, paragraph 11 d) ii. of the Framework was engaged in each of those decisions, where it was found by the Inspector that the adverse impacts of the proposed development would not significantly and demonstrably outweigh its benefits, which was an important material consideration to be weighed in the planning balance. In this case, as mentioned above, the proposed development would not benefit from the presumption in favour of sustainable development.

35. As such, although the sites considered in those appeal decisions are near to 8 Sutton Lane, neither of those appeal decisions are directly comparable with the appeal proposal.

36. In balancing the little weight given to the benefits arising from the proposed development against the moderate weight given to the collective adverse impacts, it follows that the proposed development would conflict with the development plan when considered as a whole. The other considerations, which include the provisions of the Framework and the appeal decisions mentioned above, do not indicate that the appeal must be determined otherwise than in accordance with the development plan.

Conclusion

37. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, I conclude that the appeal should be dismissed.

Alexander O'Doherty

INSPECTOR

The Planning Inspectorate

Costs Decision

Site visit made on 28 February 2024

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 APRIL 2024

Costs application in relation to Appeal Ref: APP/Y3940/W/23/3330141
8 Sutton Lane, Sutton Benger, Wiltshire SN15 4RU

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr William McMyn for a full award of costs against Wiltshire Council.
- The appeal was against the refusal of planning permission for erection of 2 No. dwellings with detached garages and associated ancillary development.

Decision

1. The application for an award of costs is allowed in the terms set out below.

Procedural Matter

2. For the avoidance of doubt, the associated appeal decision has not been affected by the application for costs. The two matters are entirely separate.

Reasons

3. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.

4. In the associated appeal decision, after establishing that paragraph 11 d) ii. of the National Planning Policy Framework (the Framework) is not engaged with respect to the proposed development, I found that the proposed development would conflict with the development plan when considered as a whole and that the other considerations do not indicate that the appeal must be determined otherwise than in accordance with the development plan.

5. However, at application stage, paragraph 11 d) ii. of the Framework was engaged, meaning that the planning balance was to be undertaken differently than at the appeal stage.

6. In determining the planning application, the Council referred to the harm arising from the identified conflicts as not being significantly and demonstrably outweighed by any benefits, in accordance with paragraph 11 of the Framework. However, this is not the correct formulation of the test given at paragraph 11 d) ii. of the Framework, which instead states that 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.

7. In this case, where, as identified in the associated appeal decision, the weight given to the adverse impacts and the weight given to the potential benefits of

the proposed development were not significantly different to each other, if the Council had correctly applied paragraph 11 d) ii. of the Framework it is likely that they would have concluded that the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits, meaning that the Framework's presumption in favour of sustainable development would apply.

8. Briefing Note No. 22-09[1] was of particular relevance at application stage, due to the Council's housing land supply position at that time. Paragraph 6.1(iii) of Briefing Note No. 22-09 states that the Council will positively consider speculative applications where there are no major policy obstacles material to the decision other than a site being outside settlement boundaries or unallocated. It has not been demonstrated that Briefing Note No. 22-09 was considered as part of the Council's decision-making, which was a material consideration which would likely have weighed in favour of the proposed development.

9. Taking all of the above into account, on a balance of probabilities I consider it likely that at the time the Council's decision was made, the proposed development should clearly have been permitted, having regard to its accordance with the development plan, national policy and any other material considerations. The Council's behaviour in preventing development which should clearly have been permitted at that time was unreasonable.

10. This unreasonable behaviour caused the applicant to incur unnecessary expense in the appeal process in relation to professional fees incurred in the preparation of planning appeal documents and responding to issues raised by the Council in their Appeal Statement.

Conclusion

11. For the reasons given above, unreasonable behaviour resulting in unnecessary expense has occurred and a full award of costs is therefore warranted.

Costs Order

12. In exercise of the powers under section 250(5) of the Local Government Act 1972 (as amended) and Schedule 6 of the Town and Country Planning Act 1990 (as amended), and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Wiltshire Council shall pay to Mr William McMyn, the costs of the appeal proceedings described in the heading of this decision; such costs to be assessed in the Senior Courts Costs Office if not agreed.

13. The applicant is now invited to submit to Wiltshire Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

Alexander O'Doherty

INSPECTOR

[1] 5 Year Housing Land Supply and Housing Delivery Test: Briefing Note No. 22-09 (April 2022) (Wiltshire Council)