
Appeal Decision

Hearing held on 8 November 2016

Site visit made on 8 November 2016

by Kevin Gleeson BA MCD MRTPI

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

Decision date: 20 January 2017

Appeal Ref: APP/D3315/W/16/3148085
Creedwell Orchard, Milverton, Somerset TA4 1PL.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by S Notaro Limited against the decision of Taunton Deane Borough Council.
 - The application Ref 23/14/0014, dated 24 March 2014, was refused by notice dated 16 October 2015.
 - The development proposed is described as an alternative proposal for 70 new homes at Creedwell Orchard, Milverton replacing extant permission for 72 homes.
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Decision

1. The appeal is dismissed.

Application for Costs

2. An application for costs was made by S Notaro Limited against Taunton Deane Borough Council. This application is the subject of a separate decision.

Preliminary Matters

3. The appeal form refers to the site address as Land off Creedwell Orchard. This more accurately describes the site location.
4. The application form was not dated and therefore I have used the date provided on the appeal form in the banner heading.
5. A signed and dated Unilateral Undertaking (UU) in accordance with Section 106 of the Town and Country Planning Act, 1990 was submitted by the appellant following the hearing. This contains a number of obligations in respect of affordable housing, public open space and a travel plan. I return to the obligations later in my decision.
6. Following the hearing, on 13 December 2016 the Council adopted the Site Allocations and Development Management Plan, (SADMP).

Main Issues

7. At the hearing I identified the main issues as I saw them at that time. In the light of the points made I have amended these as follows:
 - Whether the proposed development would provide a suitable site for housing, having regard to development plan policies;
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- The effect of the proposal on the character and appearance of the surrounding area including the setting of the Milverton Conservation Area;
- The effect of the proposed development on potential archaeological interests;
- Whether appropriate provision is made for affordable housing;
- Whether future occupiers of the development proposed would be provided with adequate opportunities to travel by means other than the private car, so contributing to sustainable travel patterns; and
- Whether appropriate provision is made for children's play space.

Reasons

Suitability of the Site for Housing

8. Policy CP8 of the Taunton Deane Core Strategy, 2012 (the Core Strategy) indicates that unallocated greenfield land outside of settlement boundaries will be protected. The appeal site is outside of the settlement boundary for the village of Milverton.
9. Policy SP1 of the Core Strategy identifies sustainable development locations within the borough establishing a hierarchy for development which includes minor rural centres of which Milverton is one. Policy SB1 of the SADMP confirms the principles of the settlement boundaries identified in Core Strategy Policy SP1 with development outside being treated as being within the open countryside. Consequently the proposed development would not be a suitable site for housing as it would be contrary to Core Strategy Policy SP1 and SADMP Policy SB1 which seek to prevent residential development outside of settlement boundaries.

Character and Appearance

10. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act, 1990 requires special attention to be paid to the desirability of preserving or enhancing the character or appearance of a conservation area when deciding whether to grant planning permission.
11. The appeal site is not within the Milverton Conservation Area but is situated close to its southern boundary. The character of the conservation area derives from its historic form with the main streets surrounding the central core characterised by dense development and with numerous listed buildings. Much of the development around the central core dates from Georgian or early nineteenth century periods.
12. The tight built form of the conservation area has not generally been compromised by more recent development with the exception of the 1960s development of Creedwell Orchard. Consequently the setting of the conservation area within the rural landscape and views into and out of it contribute to its character and appearance.
13. The proposed development on a steep slope to the south of the village would be very prominent in views from the conservation area particularly from the junction of Fore Street with Creedwell Orchard and from the junction of Rosebank Road and Silver Street. As I saw during my visit the appeal site is

also very prominent along with the conservation area when viewed from outside the village on the approach from the east.

14. The proposed layout has been designed to be reflective of the architectural features of the conservation area and in urban design terms provides an appropriate response to its setting and an acceptable landscape structure.
15. Nevertheless, I find that the proposed development would be harmful to the setting of the conservation area and would adversely impact on its character and appearance. The proposed development would conflict with the important relationship between the conservation area and the open countryside beyond the village as highlighted in the Milverton Conservation Area Appraisal Document, 2007. It would also be contrary to Policy CP8 of the Core Strategy which seeks to conserve and enhance the natural and historic environment. This finding of harm to the setting of a conservation area gives rise to a strong presumption against planning permission being granted.
16. In terms of the National Planning Policy Framework (the Framework) the proposals would result in less than substantial harm to the Milverton Conservation Area. Paragraph 134 states that where less than substantial harm would result, this should be weighed against the public benefits of the proposal including securing its optimum viable use. This is addressed in the planning balance below.

Archaeology

17. Paragraph 128 of the Framework states that where a proposed development site includes or has the potential to include heritage assets with archaeological interest local planning authorities should require developers to submit an appropriate desk-based assessment and where necessary a field evaluation.
18. A desk top archaeology report submitted with the planning application stated that there were no recorded heritage assets of such significance as to influence or preclude development within the site. In response the County archaeologist stated that the report did not adequately demonstrate that archaeology would not be harmed by the proposed development and that a field evaluation should be undertaken to inform the likely nature of archaeological remains on the site. The appellant indicated that notwithstanding the study's conclusions that there would be little or no effect on potential heritage assets, if a field evaluation was required this could be addressed through a planning condition.
19. Core Strategy Policy CP8 which seeks to conserve and enhance the historic environment states that development outside of settlement boundaries will be permitted where it will protect, conserve or enhance the interests of historic assets. Policy ENV4 of the SADMP states that where it is known or suspected that a development proposal could affect archaeological remains developers must provide for satisfactory evaluation of the archaeological value of the site and the likely effects.
20. On the basis that the site lies outside of a medieval village with potential for Bronze age/pre-historic archaeology it is necessary in this situation for a field evaluation to be undertaken prior to development to inform the likely nature of archaeological remains on the site. Whilst accepting that the application was validated on the basis of the desk based assessment the Council's request for a field evaluation was appropriate and has not been addressed. Furthermore,

this is not a matter which can be addressed through a planning condition or obligation because it is fundamental to the acceptability of the scheme. Consequently I find that the proposal has failed to meet the requirements of Core Strategy Policy CP8, SADMP Policy ENV4 and paragraph 128 of the Framework which together require a demonstration that the proposed development will not adversely impact on potential archaeological interests.

Affordable Housing

21. Policy CP4 of the Core Strategy identifies the need for sites providing five or more dwellings to meet a target of 25% of new housing to be in the form of affordable units. The Taunton Deane Affordable Housing Supplementary Planning Document, 2014 (SPD) states that financial contributions in lieu of on-site provision are only acceptable in exceptional circumstances.
22. The appellant has not proposed on-site affordable housing but instead has committed through the UU to provide a financial contribution of £153,000 for the purchase of land for 18 units to meet the affordable requirement off-site. However, no indication has been provided as to where these sites could be provided.
23. Although the appellant indicated that it would not be viable to provide the affordable housing on site, partly because a re-design of the scheme would be necessary to provide the required smaller affordable units, no financial evidence has been provided to support this proposition. In addition, the proposed financial contribution does not meet the requirement set out in the SPD which would be £1,064,067 should a financial contribution in lieu of on-site provision be acceptable. Consequently I find that the proposal would be contrary to Policy CP4 of the Core Strategy and the Affordable Housing SPD in failing to make appropriate provision for affordable housing.

Sustainable Transport

24. Policy CP6 of the Core Strategy states that development should contribute to reducing the need to travel through requiring all new developments to submit a robust evidence base and management plan in line with current policy and guidance on Transport Assessment, Travel Planning and the County Council's Travel Plan SPD. Policy A2 of the SADMP requires all development proposals which generate a significant amount of movement to include a travel plan, as does paragraph 36 of the Framework.
25. I share the County Council's view that the appellant's travel plan would not provide appropriate measures to reduce the need to travel by private car. Shortcomings in the travel plan include the lack of a viable bus service, inadequate justification for the provision of car parking on site and the lack of an appropriate monitoring strategy and targets. Through the UU the appellant has confirmed that the measures within the travel plan would be delivered. Nevertheless, because of the shortcomings identified the proposed development would be contrary to Policy CP6 of the Core Strategy, Policy A2 of the SADMP and paragraph 36 of the Framework which together seek to achieve a modal shift away from reliance on the private car.
26. The proposed public car park is intended to relieve parking pressures within the village which it may do. However, as the provision of public car runs counter

to sustainable transport objectives I consider the impact of this element at best to be neutral.

Children's Play Space

27. Policy C4 of the Taunton Deane Local Plan, 2004 (the Local Plan) requires housing developments of more than six dwellings to provide on-site landscaped and appropriately equipped recreational open space. The appropriate standards require 1000sq.m of equipped play space and 400sq.m of non-equipped quality/usable play space. Policy C2 of the SADMP also seeks to ensure that the increased demand for recreational open space arising from new residential development responds to relevant standards.
28. The proposed development makes provision for approximately 800sq.m of children's play space. This forms part of the public open space which the appellant has undertaken to provide through the UU. However, the amount of play space is significantly below the standard required by Policies C4 and C2, and in terms of location, being on the northern edge of the site would not be the most accessible location for residents of the new development although such a location would mean that it is more accessible for existing residents of the village. Nevertheless, the lack of children's play space is contrary to the requirements of Policy C4 of the Local Plan and Policy C2 of the SADMP.

Other Issues

The Extant Planning Permission

29. Outline planning permission was granted in 1975 for the development of 80 dwellings on the appeal site and adjoining land and reserved matters were approved in 1979. Part of the scheme was implemented leaving a residual development of 72 dwellings to be completed. In 2007 a Certificate of Lawful Proposed Use or Development was issued confirming the position that on the balance of probabilities the development had been commenced in accordance with the permission and could be lawfully recommenced.
30. The case of *Gambone v Secretary of State for Communities and Local Government [2014] EWHC 952 (Admin)* confirms that an existing planning permission may be a material consideration in determining a planning application. The case also confirmed a two stage approach whereby a determination must first be made concerning whether the fallback is a material consideration, before weight is ascribed. Furthermore, the prospects for the fallback occurring must be real and not merely theoretical.
31. It was suggested by interested persons that it may not be possible to implement the fallback because current drainage attenuation standards could not be achieved without the extant permission being varied. In addition, uncertainty was expressed about whether the extant scheme could be implemented in the absence of all of the approved plans. Neither these, nor other matters raised concerning the likelihood of the extant permission being implemented appear to me to be insurmountable issues. Therefore I accept the position of the main parties that implementation of the fallback is greater than a theoretical possibility.
32. In considering the weight to be attached to the fallback it is necessary to compare the relative harm from the two developments against policy conflicts. In terms of the suitability of the site for housing, as both the appeal scheme

and the extant permission would result in a similar amount of residential development in this location I consider that the harm arising from each scheme would be comparable.

33. Both schemes would give rise to a similar degree of harm to the character and appearance of the conservation area whilst the design of the appeal scheme layout would be an improvement on the extant scheme based on current principles about the design of residential development. The appeal scheme would also be more reflective of the architectural features of the conservation area than the extant scheme. However, the site boundary of the proposed scheme extends further to the south than the extant scheme and therefore further into the countryside. Moreover, the appeal scheme would be more visible in the landscape than the previous proposal such that even taking account of the submitted landscaping proposals the impact would not be fully mitigated. On this point I therefore disagree with the Council and find that the landscape impact of the appeal scheme would be worse than the extant permission.
34. The current scheme falls significantly below the current policy requirement for affordable housing and it is unclear how the proposed contribution would deliver affordable housing in the vicinity of the appeal site. In comparison the extant permission was not required to and did not make provision for affordable housing. Consequently the current proposal is marginally less harmful than the extant permission in terms of current affordable housing policy.
35. In terms of traffic generation the appeal scheme and extant planning permission would result in similar highway impacts based on a similar number of dwellings. Both schemes would also appear to have similar impacts in terms of flood risk alleviation.
36. Whilst both developments fall short of current standards for the provision of children's play areas the current proposal would offer a greater provision than the extant consent. The harm in terms of current recreational open space policy would therefore be greater with the extant permission.

Other Matters

37. The appellant identified a range of benefits which the appeal scheme provided compared to the extant permission. Apart from environmental sustainability benefits, all of the non-monetary elements have already been addressed as has the financial contribution for affordable housing. The Community Infrastructure Levy would address the infrastructure needs of the development rather than being a benefit of the appeal scheme although it would not be payable through the extant permission. As for the New Homes Bonus payment the Council indicated that this would be payable on either scheme and as I have no reason to dispute this I do not regard it as a benefit of the current scheme.

Planning Balance and Conclusion

38. Section 38(6) of the Planning and Compulsory Purchase Act, 2004 indicates that an application for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.
39. The proposal would result in development outside of the defined settlement boundary in conflict with Policy SP1 of the Core Strategy and Policy SB1 of the

SADMP. Having regard to the statutory requirement to consider the effect of proposals on the character or appearance of a conservation area I find that the proposal would result in less than substantial harm to the setting of the conservation area and would fail to conserve or enhance the historic environment contrary to Policy CP8 of the Core Strategy. In line with paragraph 134 of the Framework this harm should be weighed against the public benefits of the proposal which I do below.

40. Also weighing heavily against the proposed development are the failure to demonstrate that the scheme will not adversely impact on potential archaeological interests contrary to Core Strategy Policy CP8, SADMP Policy ENV4 and paragraph 128 of the Framework, and the failure to provide appropriate affordable housing in accordance with the requirements of Policy CP4 of the Core Strategy and the Affordable Housing SPD. The failure to provide effective measure to reduce the need to travel particularly by private car in accordance with the requirements of Policy CP6 of the Core Strategy, Policy A2 of the SADMP and paragraph 36 of the Framework together with the failure to provide appropriate children's play space in accordance the requirements of Policy C4 of the Local Plan and Policy C2 of the SADMP also weigh against the proposal.
41. The benefits of the proposal are primarily the provision of 70 new homes which should be seen in the context of the Framework requirement at paragraph 47 to boost significantly the supply of housing. However, the failure to properly address the requirement for affordable housing limits the overall benefits arising from the provision of housing. I regard the design and layout of the appeal scheme as meeting the requirements of design policies rather than a benefit of the scheme. As identified previously financial contributions should be seen as mitigation for other harms caused by the proposed development rather than as benefits.
42. I have found that the appeal scheme would be marginally less harmful than the extant permission in respect of the provision of affordable housing, children's play space and the overall layout design. However, weighing against these factors is the effect of the appeal scheme on the landscape arising from the development towards the southern boundary. Overall therefore, the harms arising from the extant permission would be broadly similar to those arising from the appeal proposal. These factors therefore limit the weight I attach to the fallback position.
43. Consequently I find that the proposed development would result in very significant conflict with the up to date development plan and that the extant permission as a fallback does not carry such weight as to justify granting planning permission contrary to the development plan.
44. For these reasons, and taking into account all matters presented in evidence and raised at the hearing, I conclude that on balance the appeal should be dismissed.

Kevin Gleeson

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Steve Rosier

Steve Rosier Limited

FOR THE LOCAL PLANNING AUTHORITY

Matthew Bale BA (Hons) MA MRTPI

Taunton Deane Borough Council

Jo Humble

Taunton Deane Borough Council

Martin Evans LLB

Taunton Deane Borough Council

Jon Fellingham BA (Hons)

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Somerset County Council

Stephen Membury

South West Heritage Trust

INTERESTED PERSONS

Dr Russell Jenkins

Milverton Parish Council

Gwilym Wren

Milverton Parish Council

Michael Reynolds

The Save Milverton Action Group

John Houghton

Local Resident

David Leyland

Local Resident

Jenny Hoyle

Local Resident

Roger Cotton

Local Resident

DOCUMENTS SUBMITTED AT THE HEARING

1. Planning Application 4/23/78/026: Refusal of Renewal of Application for Residential Development of Land at Creedwell Orchard, Milverton submitted by the Council.
2. Planning Application 23/91/026: Refusal of Application for Erection of 33 Detached Houses and 9 Terraced Houses together with Provision of Estate Roads and Garages at Land off Creedwell Orchard, Milverton submitted by the Council.
3. Extract from Inspectors Report on the Taunton Dean Local Plan Inquiry, 2004 submitted by the Council.
4. Milverton Traffic Video submitted by Mr Reynolds.

5. Extracts from Draft Site Allocations and Development Management Plan, Policies C1, C2 and C3 and Appendix E submitted by the Council.
6. Statement by Mr Reynolds.
7. Statement by Mr Houghton.
8. Statement by Dr Jenkins.
9. Letter from Inspector Examining the Taunton Deane Borough Council Site Allocations and Development Management Plan submitted by the Council.
10. Extracts from Draft Site Allocations and Development Management Plan, Policies A1, A2 and ENV4 submitted by the Council.
11. Un-numbered Tracking Plan.
12. Plan 21208/12 – Pond Sections.
13. Plan M/PL/400 – Site Section A-A.

DOCUMENTS SUBMITTED AFTER THE HEARING CLOSED

- 14 Signed Unilateral Undertaking dated 15 November 2016.