

CD6.02

Appeal Decision – Bengier

Preface:

This appeal decision is important because it deals with assessing development in lower order settlements, its accessibility and sustainability which is relevant to the consideration of the appeal scheme (§8-9 and §42).

The relevant paragraphs referenced in the Appellant's proof are highlighted yellow.



Appeal Decision

Site visit made on 24 May 2022

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 June 2022

Appeal Ref: APP/Y3940/W/21/3285458

Land at Sutton Lane, Sutton Benger, Wiltshire SN15 4RR

- 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 Hills Homes Developments Limited against the decision of Wiltshire Council.
 - The application Ref 20/03487/FUL, dated 24 April 2020, was refused by notice dated 30 April 2021.
 - The development proposed is residential development of 21 dwellings with associated infrastructure, landscaping and construction of new access onto Sutton Lane.
-

Decision

1. The appeal is allowed and planning permission is granted for residential development of 21 dwellings with associated infrastructure, landscaping and construction of new access onto Sutton Lane at Land at Sutton Lane, Sutton Benger, Wiltshire SN15 4RR in accordance with the terms of the application, Ref 20/03487/FUL, dated 24 April 2020, subject to the conditions in the Schedule at the end of this decision.

Preliminary Matters

2. The appellant has submitted 3 signed unilateral undertakings (the UUs) pursuant to section 106 of the Act – the first dated 5 May 2022 and the others dated 18 May 2022. The initial UU is signed by all signatories. The later UU's are the same but signed by different signatories. All 3 UUs include similar planning obligations relating to the provision of affordable housing, as well as financial contributions towards off-site play and recreation provision, the village hall, waste and recycling bins, air quality monitoring services and the provision of places at secondary schools in Chippenham. The 5 May 2022 UU includes an additional obligation that requires a management company to be set up to maintain open areas that form part of the development. I have taken account of the UUs in my assessment.
3. Reference is made in the submissions to an emerging Sutton Benger Neighbourhood Plan. However, this is at an early stage towards adoption and so I have attached limited weight to its contents in my assessment.
4. As well as this appeal, I have also determined a separate appeal¹ for a development of up to 24 dwellings and associated infrastructure at a nearby site to the east of Church View (hereafter referred to as the Church View proposal). While each appeal has been considered as a separate entity, I have

¹ Appeal ref no APP/Y3940/W/22/3292118

taken account that I have allowed this other appeal as a material planning consideration in my assessment.

Main Issues

5. The main issues are (i) whether the development would be in a suitable location having regard to the policies of the development plan, the National Planning Policy Framework (the Framework) and accessibility to services, (ii) its effect on the character and appearance of the area, and (iii) the aforementioned planning obligations.

Reasons

Suitability of the location

6. Under Core Policy 10 of the Wiltshire Core Strategy 2015 (the CS), Sutton Benger is identified as a large village. CS Core Policy 1 defines large villages as those with a limited range of services and restricts development to that needed to help meet local housing needs. There is limited evidence that demonstrates any particular need for housing in Sutton Benger and indeed reference is made to various recent developments in the village. In the absence of such evidence, the development would be contrary to CS Core Policy 1.
7. Moreover, the site lies outside, albeit close to, the defined boundary for Sutton Benger. CS Core Policy 2 states that development outside settlement limits would not normally be permitted unless for one of the circumstances set out in paragraph 4.25 of the CS. None of these apply in this case and so in these regards the development would be contrary to CS Core Policy 2. Also, the proposal would not accord with policy H4 of the North Wiltshire Local Plan 2001 (LP) which allows only replacement dwellings or residences required in connection with a rural enterprise on sites outside settlements.
8. Paragraph 4.15 of the CS states that development at large villages will predominantly take the form of small housing schemes of less than 10 dwellings. However, paragraph 4.15 does not form part of any CS policy and the use of the word "predominantly" indicates that this is not a firm requirement. As such, the failure of the development to comply with the terms of paragraph 4.15 is afforded limited weight.
9. The Framework advises that housing in rural areas should be located where it will enhance or maintain the vitality of rural communities. Due to their proximity, it is probable that residents of the proposed housing would use the range of facilities in Sutton Benger which includes a primary school, village hall, recreation facilities, pubs, post office and doctors' surgery. As such, the development would help sustain the vitality of the village.
10. All the village facilities would be within a reasonable walking distance from the development. Also, new pavements are proposed on Sutton Lane to assist safe pedestrian movement between the development and Chestnut Road where the primary school, village hall, recreation ground and doctors' surgery are located. This proposed pavement would not lie within the appeal site but it would be part of the public highway and so it would be reasonable to impose a Grampian style condition to secure its provision.
11. The proposed pavement would not provide a complete link to Chestnut Road and there would be a gap where pedestrians would need to walk in the road.

Also, walkers from the development would need to cross Sutton Lane to access local facilities. However, from my observations the road is lightly trafficked with slow vehicle speeds. As such, the route to the village facilities would feel safe even where gaps in the pavement would require pedestrians to walk in the carriageway. Moreover, the footway would improve safety for walkers between existing residences on Sutton Lane and the rest of the village.

12. Furthermore, the development would be within a reasonable walking distance of local bus stops. These would provide occupiers of the dwellings with reasonable access to bus services that run on weekdays and on Saturdays. The number of buses is limited but even so the services would provide an opportunity to travel by public transport to Chippenham and to a wider range of facilities. Also, the development would be within a reasonable cycling distance from Chippenham.
13. Notwithstanding the above, it is highly likely that a significant proportion of trips to and from the development would be by car. In particular, this is likely to be the mode of travel to shops, higher order leisure facilities and work places. In these regards, the development would not reduce the need to travel by car and so it would not accord with CS Core Policies 60 and 61. However, the proposed extensions of roadside pavements would promote walking and consequently the use of local bus services. In these regards, the development would comply with the terms of the Framework. Also, I have taken into account that the opportunity to maximise sustainable transport solutions will vary between urban and rural areas, as emphasised in the Framework.
14. Having regard to its location outside the settlement boundary, the lack of evidence to show it would meet a local need and its scale, I find the proposed development would be contrary to the CS spatial strategy. Also, in light of the paucity of higher order facilities and places of employment within the village, it would not entirely reduce the need to travel by car. For these reasons, I conclude the development would not be in a suitable location having regard to CS Core Policies 1, 2, 10, 60 and 61 as well as LP policy H4. The harm caused in these respects is tempered by the scheme's accordance with the Framework's provisions on the location of rural housing and the potential for residents to walk to the facilities and public transport links in the village. The Council's refusal reasons also refer to CS Core Policy 48. This is irrelevant as the proposal would not be a type of development referred to in the policy.

Character and appearance

15. The site is a grassed field with hedgerow and trees on the boundaries to Sutton Lane and to the fields to the south and east. A residential cul de sac called Sutton Gardens and Sharplands lies to the north. Also, the site is next to allotments that lie to the south of properties that face onto Sharplands.
16. The site has a sense of the countryside due to the absence of buildings as well as the boundary vegetation. However, it is visually separated from the extensive tracts of fields to the south and east by trees and hedges. Moreover, its proximity to the houses on Sutton Gardens and Sharplands leads to an edge of village or semi-rural character.
17. The proposal would result in a more developed and domestic character to the site. Also, the creation of the proposed access would form a gap in the roadside hedgerow which to a minor degree would reduce the vegetated, visual qualities

- of the road. Even so, the development would have a close relationship to Sharplands and Sutton Gardens, even if it would not be directly adjacent to any existing residences. As such, the development would not be significantly out of keeping with its surroundings and it would not appear isolated from the village.
18. The new access and the few gaps in the roadside vegetation would allow views from the highway of the development. Such views would undermine the open countryside nature of the locality. Moreover, the proposal would be seen further along the road to the south when approaching the village. Currently from these viewpoints the houses in the adjacent cul de sac are already visible. As such, the proposal would have the effect of bringing the built up extent of the village slightly further southwards.
 19. The development would also be clearly seen from the allotments, Sharplands and Sutton Gardens. From these vantage points, the resulting encroachment of the village into the surrounding countryside would be more readily apparent. As well as the visual effect of new buildings and roads, the introduction of domestic activities as well as the coming and going of vehicles would diminish the tranquillity of the area. In addition, the development would lead to new light sources that would affect the night time scene and would be detrimental to the rural feel of the locality.
 20. The Council refers to other possible viewpoints of the development including public rights of way to the south, east and north as well as from the recreation ground in the village. Given the separation distances and intervening vegetation and buildings, the development would not be prominent from such vantage points. Where seen, it would be read with the nearby houses at Sharplands, Sutton Gardens and along Sutton Lane.
 21. Elements of the development would be near to the site boundaries but the buildings would be positioned so as to allow the retention of most of the boundary vegetation and the provision of additional planting. As such, the proposal would avoid a sharp and insensitive interface with the wider countryside. Nonetheless, it is likely the houses would have a visual influence on the adjacent fields.
 22. The village contains a number of residential cul de sacs and so the proposed development would follow a common layout form. The amount of proposed hardstanding would not be particularly excessive and the incorporation of plots with front gardens would ensure the development is not overly car dominated. Also, it would not appear uncharacteristically dense. The affordable housing would be similar to some of the open market units and so it would be a tenure blind scheme. In general terms, the development would be similar in style and appearance to the nearby Sharplands and Sutton Gardens.
 23. In summary, the proposal would significantly erode the rural aspects of the site. This effect would be noticeable to a limited degree from the road, adjoining fields and viewpoints further away. However, it would represent a marked visual change to the setting of the allotments and in views looking southwards from Sharplands and Sutton Gardens. The development would not appear isolated or out of keeping with its surroundings and it would be of an appropriate high quality design. Even so, it would represent an encroachment into open countryside, albeit a minor extension compared to the built up extent of the village as a whole. As such, the development would be harmful to the character and appearance of the area and in these regards it would not accord

with CS Core Policies 51 and 57. Amongst other things, these seek to protect landscape character and natural features.

Planning obligations

24. There is no dispute between the main parties that the aforementioned planning obligations are fair and reasonable. Also, it is agreed the planning obligations are necessary to address the Council's objections as set out in its 4th refusal reason. I find no reason to disagree with the parties on these matters.
25. The Council's refusal reason on planning obligations refers to highway improvement works. However, its appeal submissions indicate the construction of new pavements within the highway could be reasonably secured by a planning condition. No other highway improvement works are referred to and so I find no reason for a planning obligation that covers this issue.
26. The 5 May 2022 UU includes a planning obligation setting out specific requirements regarding the management of open space through a management company. This is not referred to as being necessary in the Council's submissions. The maintenance of planting that falls within the public parts of the development is needed to ensure its satisfactory appearance. However, in the absence of any clear explanation I am not persuaded that this needs to be carried out by a management company as specified under the terms of the UU. Therefore, I consider this planning obligation is unnecessary to make the development acceptable in planning terms. Instead, it is reasonable to impose a planning condition that covers the issue.
27. Unlike the initial UU dated 5 May 2022, the UUs dated 18 May 2022 are laid out and worded in a format preferred by the Council. The later UUs also include additional clauses that relate to actions and charges should the owner of the site fail to provide required notifications, registration of the UU and an indemnity. There is no evidence or reference to planning policy that supports the inclusion of such clauses but they have no effect on the planning obligations. Without any evidence to the contrary, I am satisfied the UUs are legally sound.
28. For the above reasons, I conclude that, apart from that which relates to a management company, the planning obligations are fair, reasonable and necessary and the UUs would be effective in securing the obligations. As such, the development would accord with CS Core Policies 3, 43, 45 and 52 and LP policy CF3.

Other considerations

29. Several other concerns have been raised. The appellant's transport statement demonstrates that the development would lead to only a modest increase in traffic. Even when taking into account the traffic generated by the Church View proposal and other schemes in the wider area, there is no substantive evidence to show the development would lead to highway capacity problems. The proposal would be served by appropriate vehicular and separate pedestrian accesses and it would not prejudice highway safety.
30. Information on drainage for the scheme has been accepted by the Council's drainage engineer and Wessex Water also raise no objections. As such, I am satisfied a planning condition could be reasonably imposed to ensure surface water is disposed of appropriately and without increasing flood risk elsewhere.

There is no firm evidence such as flood risk maps to show that the development would be at flood risk. The sewerage treatment site would be far enough away to avoid odour problems for future occupants.

31. The development would be set away from the boundary of Sutton Benger Conservation Area (CA) with intervening properties and vegetation. Due to this lack of intervisibility, the proposal would preserve the setting, character and appearance of the CA. Additional traffic as a result of the development would have no meaningful effect on the significance of any heritage assets.
32. There is no evidence to demonstrate that any features of wildlife importance would be harmed by the development and the Council accepts the appellant's claim that the scheme would enhance the site's biodiversity value. I find no reason to arrive at a different opinion on this matter.
33. It is suggested that the site includes grade 2 agricultural land which would be lost as a consequence of the development. However, it is an enclosed, small plot with no obvious purpose and so the development would cause no harm of any significance through the loss of agricultural land.
34. I note concerns that the proposal would lead to additional use of the village surgery and extra demand for places at the primary school. However, there is no firm evidence to show that the development on its own or with the Church View scheme would lead to unacceptable pressure on local health services. Also, the information provided by the Council indicates that the school has capacity to accommodate pupils from this and the Church View scheme. There is no reason for me to arrive at a different opinion on these matters.
35. The concerns raised fail to justify dismissing the appeal. As such, they do not affect my overall assessment.

Housing land supply and planning balance

36. For the reasons set out in respect of the first and second main issues, the proposal would not accord with development plan policies when read as a whole. It follows to consider whether other factors justify allowing the appeal contrary to the development plan.
37. The Framework requires local authorities to identify a supply of deliverable sites sufficient to provide a minimum of 5 years' worth of housing. With reference to the Annual Housing Monitoring Report April 2022 (AHMR), the Council states it can demonstrate 4.72 years of supply for the county as a whole. Also, it sets out the various actions taken to address the shortfall in housing supply. These include granting planning permissions for residential development sites in Sutton Benger, in the wider local housing market area and elsewhere in the county. It is suggested that housing delivery figures show the land supply position is improving.
38. The appellant contends that the AHMR overstates the amount of available housing land and suggests a figure of 4.57 years supply instead. Irrespective as to whether this case is accepted or not, the Council is currently unable to show the minimum 5 year supply. In such circumstances, paragraph 11 of the Framework states that relevant development plan policies which are most important for determining the appeal are deemed out-of-date. Planning permission should be granted unless the adverse effects of doing so would

significantly and demonstrably outweigh the benefits when assessed against the Framework's policies.

39. Even if the 4.72 year figure is accepted, the proposal would make a meaningful contribution towards addressing the identified shortfall in housing land supply. Moreover, 8 of the proposed units would be affordable, so helping to ensure an appropriate mix of units to meet a variety of accommodation needs and demands. Given these factors and the scale of the development, I attach considerable weight to the scheme's benefits in terms of housing provision.
40. In addition, the proposal would create construction jobs and it would be close enough to allow occupants to support village services. These economic benefits attract moderate weight. The planning obligations would address needs raised by occupiers of the development but enhancements from contributions towards sports pitches and courts and the village hall would also benefit the existing population. This attracts limited weight in support of the scheme.
41. In terms of adverse effects, the Framework reiterates that the development plan is the starting point for decision-making. However, paragraph 11 advises that where the tilted balance applies, there may be justification to grant planning permission contrary to the development plan.
42. The proposal would not accord with the CS spatial strategy and development plan policies on the location of housing. However, the weight to be attributed to this conflict is reduced as the development would accord with the Framework's aim to locate rural housing where it would maintain the vitality of communities. Also, in line with the Framework, the scheme would allow the potential for walking, cycling and public transport trips to some facilities, despite the reliance on the private car to access places of employment and higher order services. As such, I attach only moderate weight to the unsuitability of the development's location. In arriving at this view, I have had regard to the cumulative effects of previous housing developments allowed in the village as well as the effects of the Church View proposal.
43. The scheme would go against the aim of the Framework to ensure development recognises the intrinsic character and beauty of the countryside. Given the particular effects of the scheme, the harm in these regards attracts moderate weight in my assessment.
44. When considering all factors together, I find the adverse impacts of the proposal would not significantly and demonstrably outweigh its benefits when assessed against the Framework. As such, the presumption in favour of sustainable development at paragraph 11 of the Framework applies. In such circumstances, the Framework states planning permission should be granted.
45. The scheme would conflict with development plan policies when read as a whole. However, for the reasons given above, its benefits and other considerations are of sufficient weight to justify granting planning permission contrary to the development plan.

Conditions

46. I have considered the conditions suggested by the Council, having regard to the tests in the Framework. Where appropriate, I have amended the wording for precision reasons and to avoid unnecessary pre-commencement conditions.

47. A condition setting out the approved plans is imposed for reasons of clarity and to ensure the development is carried out as proposed. A construction management plan is needed to avoid harm to the living conditions of nearby residents, to the environment and to highway safety. To protect and enhance the biodiversity of the site a condition is included that requires the development to be carried out in accordance with the appellant's ecological report. To protect trees, a similar condition is needed that refers to the submitted tree report.
48. A drainage condition is required to prevent flood risk and ensure surface water is disposed of appropriately. A condition is imposed regarding materials to be used in the construction of buildings as the level of detail provided is inadequate to ensure a satisfactory appearance. However, sufficient information on means of enclosure are shown on the approved drawings and so the suggested condition in this regard is not needed. Conditions requiring the approval, implementation and management of a landscape scheme are included as the schematic details before me are insufficient to ensure an acceptable effect on the character and appearance of the area.
49. In the interests of highway safety, conditions are included that relate to the access, parking and turning areas as well as visibility splays. To encourage sustainable means of travel, conditions regarding off-site pavements and cycle parking are imposed. A condition restricting the conversion of garages is needed to ensure sufficient parking space is provided. However, a condition preventing the installation of artificial lighting would be unreasonable given the residential nature of the scheme. Therefore, this condition is not imposed.

Conclusion

50. For the above reasons, I conclude that the appeal should succeed.

Jonathan Edwards

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 16.096.001 Rev E; 16.096.101 A; 16.096.102 A; 16.096.103 A; 16.096.104 A; 16.096.105 A; 16.096.106 A; 16.096.107 A; 16.096.111 A; 16.096.113 A; 16.096.114 B; 16.096.116; 16.096.117; 16.096.118; 16.096.119; 16.096.120; 16.096.121; Typical Bike Store; DR-C-053 P03; DR-C-002-P04; DR-C-100-P07; 16.96.500 Rev H; 16.096.501.Rev.H; 18024-200-01.
- 3) The development hereby permitted shall not commence until a Construction and Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP shall include details of the following relevant measures:

- an introduction consisting of construction phase environmental management plan, definitions and abbreviations and project description and location;
- a description of management responsibilities;
- a description of the construction programme;
- site working hours and a named person for residents to contact;
- detailed site logistics arrangements;
- details regarding parking, deliveries, and storage;
- details regarding dust and noise mitigation; and
- communication procedures with the local planning authority and local community regarding key construction issues – newsletters, fliers etc.

Where piling is required this must be continuous flight auger piling wherever practicable to minimise impacts. Stone crushing shall be limited to 1030 to 1530 Monday to Friday with no crushing at weekends or bank holidays.

There shall be no burning undertaken on site at any time. Construction hours shall be limited to 0800 to 1800 Monday to Friday, 0800 to 1300 on Saturdays and no working on Sundays or Bank Holidays. The development shall be carried out in accordance with the approved CEMP.

- 4) The development shall be carried out in strict accordance with the recommendations as set out in the supplemental preliminary ecological appraisal dated 11 November 2020 by Chalkhill Environmental Consultants.
- 5) The development shall be carried out in strict accordance with the provisions of the aboricultural impact assessment incorporating tree survey, tree protection plan and aboricultural method statement, dated 15 April 2020, by SJ Stephens Associates.
- 6) Apart from the construction of the access or the excavation of foundation trenches, no development hereby permitted shall commence until a scheme for the discharge of surface water (including surface water from the access and driveways), incorporating sustainable drainage details, has been submitted to and approved in writing by the local planning authority. The development shall not be first occupied until surface water drainage has been constructed in accordance with the approved scheme.
- 7) Prior to the commencement of construction works of any of the buildings hereby permitted, samples of the materials to be used for the external walls and roofs of the buildings shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 8) Prior to the commencement of construction of any of the buildings hereby permitted, a scheme of hard and soft landscaping shall be submitted to and approved in writing by the local planning authority. The details shall include:-
 - location and current canopy spread of all existing trees and hedgerows on the land and full details of any to be retained;

- a detailed planting specification showing all plant species, supply and planting sizes and planting densities;
- finished levels and contours;
- all hard and soft surfacing materials;
- minor artefacts and structures (e.g. furniture, play equipment, refuse and other storage units, signs, lighting etc);
- proposed and existing functional services above and below ground (e.g. drainage, power, communications, cables, pipelines etc indicating lines, manholes, supports etc).

All soft landscaping comprised in the approved details of landscaping shall be carried out in the first planting and seeding season following the first occupation of the development or the completion of the development whichever is the sooner. All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which, within a period of five years, die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species. All hard landscaping shall be carried out in accordance with the approved details prior to the occupation of any part of the development.

- 9) No part of the development shall be first occupied until a landscape management plan, including long-term design objectives, management responsibilities and maintenance schedules for all landscape areas (other than small, privately owned, domestic gardens) has been submitted to and approved in writing by the local planning authority. The landscaped areas shall be managed in accordance with the approved details.
- 10) No part of the development shall be first occupied until the access, parking spaces and turning areas have been completed in accordance with the details shown on the approved plans. The areas shall be maintained for those purposes at all times thereafter.
- 11) No part of the development shall be first occupied until the visibility splays shown on the approved plans have been provided with no obstruction to visibility at or above a height of 1m above the nearside carriageway level. The visibility splays shall be maintained free of obstruction at all times thereafter.
- 12) No part of the development shall be first occupied until the cycle parking facilities shown on the approved plans have been provided in full and made available for use. The cycle parking facilities shall be retained for such uses thereafter.
- 13) No part of the development shall be first occupied until details of a new footway from the site along Sutton Lane have been submitted to and approved in writing by the local planning authority. No part of the development shall be occupied until a footway has been provided in accordance with the approved details.
- 14) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended by any Order revoking or re-enacting or amending that Order with or without modification), the garages hereby permitted shall not be converted to habitable accommodation.