
Appeal Decision

Inquiry held on 10 - 13 and 23 - 24 January 2017

Site visit made on 24 January 2017

by K H Child BSc (Hons) MA MRTPI

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

Decision date: 21 March 2017

Appeal Ref: APP/Q3115/W/16/3153639 **Land east of New Road, East Hagbourne**

- 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 Grainger PLC against the decision of South Oxfordshire District Council.
 - The application Ref P15/S3228/O, dated 24 September 2015, was refused by notice dated 18 May 2016.
 - The development proposed is described as 'outline application for the construction of circa. 170 residential dwellings with associated vehicular access from New Road, internal access roads, public open space, landscaping and parking (detailed access with all other matters reserved).'
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was made in outline with all matters reserved except means of access. I have considered the appeal on this basis, although I note the illustrative masterplan and other indicative drawings which demonstrate how the appellants envisage the development being carried out.
3. Whilst layout is a reserved matter, a drawing has been provided with the Section 106 agreement which, if I consider it is necessary, provides a layout plan for open space. Nevertheless, the agreement allows the Council to waive the requirement to provide open space in accordance with the plan, and deal with the matter through a reserved matters application.
4. The Inquiry sat for six days, and I held an accompanied site visit on 24 January 2017. I also conducted unaccompanied site visits on 10, 11 and 12 January 2017.
5. There is a discrepancy between the appellant and applicant name, as recorded on the appeal form and application form. However, the same company name appears on both, and I have therefore referred to this in the banner heading above.
6. The application was refused by the Council for three reasons. The Council is satisfied that reasons 2 and 3, relating to infrastructure and affordable housing,

can be overcome through the submission of a planning obligation. The executed planning obligation is dealt with below.

7. The Council's reasons for refusal includes reference to Policy D1 criteria (ii) and (iv) in the South Oxfordshire Local Plan (2011). However, at the Inquiry the Council confirmed that this contains an error and that criteria (vi) relating to landscape character should have been referenced instead of (iv) relating to design layout and legibility. This point was not disputed by other parties and appears logical on the basis that outline permission was sought.

Main Issues

8. The main issues in this case are:
 - The effect of the proposal on the character and appearance of the area, including the setting of the North Wessex Downs Area of Outstanding Natural Beauty (AONB).
 - Whether, having regard to the housing land supply position and all other relevant considerations, the proposal would be sustainable development.

Reasons

The appeal site

9. The appeal site consists of approximately 7.05 hectares of agricultural land located on the southern edge of Didcot. The site is in arable use and is largely open, with a tree belt along its northern and western boundaries. Beyond the northern tree belt there are allotments, open space and residential development within the Didcot Fleet Meadow estate. To the south and west the site is surrounded by residential development which stretches north along New Road from the historic core of nearby East Hagbourne village. The eastern and part of the southern site edge adjoin open farmland.
10. The appeal site has a small length of public footpath in its north-eastern section. This links to a public footpath which is adjacent to the site and extends along its northern boundary. On my site visit I observed a number of people walking in other parts of the site which do not benefit from public rights of way. The appellant indicated at the inquiry that such access is not tolerated.

The policy background

11. The appeal site lies outside the built-up areas of Didcot and East Hagbourne, albeit within the parish of East Hagbourne. As such the site is open countryside for the purposes of planning policy. Policy CSEN1 in the South Oxfordshire Core Strategy (2012) (CS) and saved Policies G2, G4, C4 and D1 in the South Oxfordshire Local Plan (2011) (LP), together, seek to protect the district's countryside from adverse development and protect landscape character and setting, including the separate identities of settlements. This generic approach is a common alternative to the designation of specific sites as 'green gaps', and is in line with the core principle in the National Planning Policy Framework (the Framework) which states that planning should take account of the different roles and character of different areas, and recognise the intrinsic character and beauty of the countryside.
12. The site is not subject to any formal designations, but lies within the setting of the North Wessex Downs AONB. The Planning Practice Guidance (PPG)

indicates that the statutory duty to have regard to the purpose of conserving and enhancing the natural beauty of AONBs is *'relevant in considering development proposals that are situated outside National Park or AONB boundaries, but which might have an impact on the setting of, or implementation of, the statutory purposes of these protected areas.'* Policy CSEN1 in the CS states that development proposals should have regard to the setting of AONBs.

13. The South Oxfordshire Landscape Character Assessment (1998) (SOLA) was adopted by the Council as Supplementary Planning Guidance in 2003. It provides a framework for assessing landscape and visual character in the district, and is used by the Council as a material consideration in the determination of planning applications.
14. The Council is currently producing a new Local Plan for the district and a linked Development Plan Document (DPD) for Didcot. Didcot has been designated as a Garden Town¹, and the associated boundary publication² indicates that the appeal site would fall within the area covered by the Didcot DPD. A Neighbourhood Plan is also being prepared for East Hagbourne. Nonetheless, the plans are at an early stage of preparation and have yet to be submitted for examination. Accordingly, only limited weight can be attached to them.
15. Paragraph 49 of the Framework states that an authority's policies for the supply of housing should not be considered up to date if a five year supply of deliverable housing land cannot be demonstrated. For decision-making this means granting permission unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. As I will explain below, it is agreed in this case that a five year supply of deliverable housing land does not exist.

Character and appearance of the site and surrounding area

16. The appeal site lies in the Upper Thames Clay Vales National Character Area (NCA108), and is identified in the Oxfordshire Wildlife and Landscape Study (2004) and SOLA (1998) respectively as 'Lowland Farmland' Landscape Character Type (LCT) and 'Flat Open Farmland' LCT. As a regular shaped and low lying arable field with some boundary vegetation the appeal site fits with a number of key characteristics of these classifications.
17. The regional and local study highlight that the character of such areas can be denuded by the proximity of urban areas or visually prominent structures including overhead power lines and Didcot power station. Nonetheless, although the appeal site is located on the edge of Didcot, the estate to the north is screened by a tree belt, and the site itself has little sign of urban activity. Although power lines can be seen beyond the appeal site, these are partly obscured by a tree belt to the east. The absence of hedging or fencing on the eastern and part of the southern boundary may be the result of intensive arable farming, but conversely in this case helps to provide open views and connect the site to the wider farmland beyond. Overall, I am satisfied that the site has a distinct rural character and appearance.

¹ Following a successful bid to Government in 2015.

² Didcot Garden Town Proposed Boundary (November 2016) (CD5.25).

18. The allotments, public footpath and small areas of woodland to the north of the appeal site also provide open space. However, the tree belt along the southern boundary of the allotments, and extending along the edge of the Fleet Meadow estate, provides a clear demarcation to the edge of Didcot. The allotments also contain a number of sheds and other structures, and provide an essential facility for the town. Therefore in functional and visual terms I consider the allotments and public open spaces on the northern boundary form part of Didcot.
19. The appeal site, by virtue of its extensive, undeveloped and open character, provides a clear physical and visual separation or gap between the built-up areas of Didcot and East Hagbourne on the east side of New Road. When travelling along New Road there is a clear sense of this divide, with views across open countryside and towards distant hills in the AONB. My site visit took place in January when there is less foliage present. However, the photomontage evidence submitted by the appellant shows that, despite the presence of a number of trees along the western boundary, there are still clear views across the site from New Road during summer months.
20. The site adjoins a public footpath to the north and close to its eastern boundary. There are some gaps in the planting along the northern boundary which allow views across the appeal site. On my site visit I was also able to see the field between the foliage along the footpath, albeit I recognise that in Summer these glimpsed views would be less extensive. From the eastern footpath, although dwellings on the west side of New Road can be seen in the far distance, and despite a slight rise across the site from north-east to south-west, there are unimpeded open countryside views across the appeal site. I am therefore satisfied that a distinct separation between Didcot and East Hagbourne can be discerned in these localities. Both footpaths appear to be well used, as witnessed on my site visits.
21. Didcot and East Hagbourne are very different in form and character. Didcot is a large and growing town. Although East Hagbourne has expanded through ribbon development along New Road, it remains a modest sized village, largely focused around its historic core. The open gap provided by the appeal site thereby helps to preserve the separate function and character of each settlement.
22. On the west side of New Road there is a mix of ribbon and estate development and the separation of East Hagbourne and Didcot is less marked, with an old railway line forming a narrow strip of green space between the two settlements. However, elsewhere there is clear open land between East Hagbourne and Didcot, including to the east/south-east of the appeal site and further to the south-west, and overall I consider that the village has retained its separate identity. Nevertheless, in the context of built development on the west side of New Road, and the site's prominent position on the main road between the two settlements, I consider the gap afforded by the appeal site is particularly important in providing a clear sense of separation.
23. Part of the distinct character of a village is derived from its proximity to surrounding fields. The appeal site forms part of a network of fields on the edge of East Hagbourne, and as such contributes to the rural setting and character of the village. Its rural appearance also provides a green and open

- setting for Didcot, in addition to facilitating a clear demarcation between town and village.
24. As described above, there are open views across the site from a number of public vantage points in the vicinity, despite the presence of some boundary vegetation and nearby residential development. These views are attractive, provide visual links to the wider countryside, and contribute to the character of the locality. Despite its relatively low topography and the presence of a tree belt to the east, the site can also be seen from a number of further vantage points, including public footpaths to the south-east and distant hills in the AONB. Overall, I therefore consider there is good inter-visibility between the site and the surrounding landscape.
25. The appellant contends that the site should not be classified as a 'valued landscape', which paragraph 109 of the Framework states should be protected and enhanced. The Stroud judgement³ indicates that a valued landscape needs to possess some physical attribute which takes it above mere countryside. Some direction is also provided in the national Guidelines for Landscape and Visual Impact Assessment⁴ (GLVIA3), and is referenced by the main parties in their evidence. 'Consensus' does not feature in the list of factors in GLVIA3.
26. The appeal site has some landscape quality value (condition), on the basis that it is an open arable land and, notwithstanding its location on the edge of Didcot and some boundary vegetation, appears broadly typical of the character type of 'flat open farmland' as established in the SOLA (1998). It also has some recreation value as it includes a section of public footpath. However, in themselves these qualities are not substantial or particularly noteworthy.
27. As outlined above, the appeal site provides an important buffer between Didcot and East Hagbourne. In this context I consider the site has considerable perceptual value, which is augmented by its visibility. The site also has notable scenic value by virtue of the attractive views and visual links to the open countryside it provides. As the last remaining stretch of open countryside alongside New Road it is locally distinctive and has particularly significant value.
28. Taking these attributes into account, and notwithstanding the conclusions of the appellant's Landscape and Visual Impact Assessment (LVIA), I consider that the appeal site possesses notable perceptual, scenic and representative qualities, which elevate it above mere countryside. I concur with the Council that the value of a site cannot be assessed in isolation of its setting, and some of this value arises as a consequence of the site's location. This wider application is specifically referenced in paragraph 5.30 of GLVIA3. Overall, I therefore conclude that the appeal site is a valued landscape in terms of paragraph 109 of the Framework.
29. The appeal site is classified as grade 2 agricultural land. However, soils are referenced separately in paragraph 109 of the Framework, and elsewhere in paragraph 112. As such I have attributed little weight to this issue in my assessment of valued landscape. The Council and other interested parties have also highlighted that the site is valued by the local community. However, this

³ [2015] EWHC 488 Stroud District Council v Gladman Developments Limited.

⁴ Guidelines for Landscape and Visual Impact Assessment (GLVIA3) (2013) (third edition) – Landscape Institute and Institute of Environmental Management and Assessment.

is not a direct physical attribute, and whilst I am mindful of the significant level of objections to the appeal scheme and the high level of attendance at the inquiry, this has not led me to alter my conclusions regarding valued landscape.

Effect on character and appearance

30. The main parties agree that the LVIA's broad methodology is fit for purpose and complies with GLVIA3. The LVIA looks at the effect of the proposed development on landscape character and in terms of visual impacts, and I deal with both of these matters in turn below.
31. The main parties have sought to supplement the LVIA with additional photomontages/visualisations. However, the appellant's photomontages have been independently verified and cover the period from completion up to year 15. I have therefore attached significant weight to these, and modest weight to the Council's visualisations, in my assessment of the proposal. The appellant has also provided panoramic photography for a number of additional viewpoints in the AONB⁵.
32. The Council's assessment of landscape and visual impacts⁶ provides an alternative evaluation of effects, but is not intended to be a full LVIA. It uses different assessment terminology to the LVIA and national guidelines. However, this does not in itself negate its evaluative judgements. The assessment refers to the effects of landscaping over time, and there is no evidence that it solely relies on the year 1 visualisations provided by the Council. Notwithstanding this, the Council's expert landscape witness stated at the Inquiry that he would have reached the same judgements based on the appellant's photomontages.
33. The proposed development would, by introducing built-form into an open agricultural field, significantly alter its character. The LVIA acknowledges this change but concludes that in the long term the magnitude of effect on landscape character would be '*medium positive*' and the significance of effect would be '*moderate beneficial*'.
34. This conclusion, to an extent, appears to be based on proposals for new planting and landscape features as part of the scheme. This includes the re-establishment of historic field boundaries through hedgerow planting, green links to the existing footpath to the north, and the provision of swales and ponds. I recognise that such provisions could bring landscaping, ecological and recreational benefits, and help to provide a clear edge to the scheme⁷, as established in the submitted Green Infrastructure Strategy⁸. Additional planting, coupled with the set-back position of the built-form and other aspects of design could help to reduce or improve the scheme's visual appearance. Existing features such as the northern tree belt and the majority of trees along the New Road frontage would also be retained.
35. Nevertheless, as established above, I consider that the appeal site has considerable value by dint of its open and rural character, and is a valued

⁵ As set out in Appendix 1 of the appellant's landscape expert witness proof of evidence.

⁶ As set out in the Council's landscape expert witness proof of evidence.

⁷ Having regard to the Landscape Institutes' Position Statement 'Green Infrastructure An Integrated Approach to Land Use'.

⁸ Rev B September 2015.

landscape under paragraph 109 of the Framework. Part of this value relates to the site's physical position between two settlements, and the buffer and open setting that it provides. The SOLA Study highlights that landscapes on the fringes of settlements are particularly vulnerable to change, and that special attention should be paid to preventing the coalescence of settlements. There are other open fields between Didcot and East Hagbourne. However, the appeal site is the last remaining notable countryside break between Didcot and East Hagbourne adjoining New Road.

36. The illustrative masterplan (January 2016) and other submitted evidence proposes public open space across the northern part of the site and along the frontage, with the band widening in the north-west section of the site. The appellant has indicated that open space would amount to about 30% of the site area. It would also have a number of functions and link with open areas and planting to the north. Nevertheless, residential development would extend across the majority of the appeal site. This is supported by the appellant's photomontages from viewpoint 1 which show that only a very narrow and restricted view of open countryside beyond would be available from New Road, across the northern strip of open space.
37. Other characteristics which mark a transition between Didcot and East Hagbourne when travelling south along New Road would remain, including the allotments and tree belt, the old railway line area, the change in road alignment, and the contrast between estate development and ribbon development. Nevertheless, overall I consider the proposed development would fail to maintain clear separation between Didcot and East Hagbourne, and result in the effective coalescence of the two settlements in this locality. To a degree the function of the gap as formal amenity space rather than agricultural land would also contribute to a weakening in the perceptual gap. Accordingly, notwithstanding any similarities between the general form of the proposed open space and the band of open space that separates Didcot and East Hagbourne on the west side of New Road, I consider the proposal would erode the separate identities of the two settlements and detract from their settings.
38. I recognise that the application is outline with landscaping and layout reserved, albeit the Section 106 agreement does establish a potential open space plan as referenced above. Nevertheless, there is no firm evidence before me to suggest that, having regard to the number of dwellings proposed and the site configuration, the amount or form of open space feasibly delivered would be capable of providing clear separation between Didcot and East Hagbourne.
39. I consider that the LVIA gives insufficient recognition to this aspect of landscape character and the important buffer role that the site plays, and is overly positive about mitigation. I therefore consider that the magnitude of effect would be 'medium negative' rather 'medium positive', and that overall the scheme would give rise to a 'moderate adverse' rather than 'moderate beneficial' effect on landscape character as identified in the LVIA.
40. Turning to visual impact, the current view from New Road is of an open agricultural field with views beyond to the wider countryside and distant hills in the AONB. Again, as the last notable physical countryside break adjoining the east side of New Road, these views are striking and have particular significance, and are wide ranging by virtue of the considerable width of the

frontage. Receptors include drivers on New Road, and people using the pavements for leisure purposes, including dog walking. New Road is not a trunk road or an A road, and has residential speed limits. On my site visit I also observed a number of people walking dogs or cycling on New Road in the vicinity of the site. I therefore consider that receptors would overall exhibit a medium sensitivity, rather than a low sensitivity as identified in the LVIA.

41. The proposed development would, by virtue of its extent and suburban form, result in the loss of these wide ranging views and visual links to the countryside from New Road. The illustrative masterplan indicates that dwellings would be set back from the frontage, and existing vegetation would be supplemented by additional planting. However, notwithstanding that additional planting or larger stock could be secured via condition or at reserved matters stage⁹, built form would extend into the open field and given its scale and the extent of land available for planting I consider it is highly likely that buildings would be seen between and above foliage, particularly in Winter. The access road would also be likely to allow views into the estate, as well as introduce a suburban feature.
42. Overall, therefore, despite the presence of other urban and estate scale development in the local area, I consider that the proposed development would involve a high degree of visual change and cause significant visual harm, as seen from New Road. From viewpoints adjacent to the site, including number 8 in the LVIA, I consider that the overall effect would be 'major adverse', with this decreasing to 'moderate adverse' at viewpoints such as 7 and 9 which are slightly set back. In this regard I differ from the conclusion in the LVIA, which suggests that the magnitude of effect would be 'low positive' and the scheme would have a 'minor beneficial' visual effect as seen from viewpoints 7, 8 and 9.
43. Additional landscaping and planting is also proposed along the northern and eastern boundaries of the site, with development being set back. Despite this provision, and notwithstanding the ability to increase the amount of planting, I consider that by virtue of its scale and extent the proposed development would be seen from nearby public footpaths to the north and east of the site, with visibility being greater in Winter. From the north where there are gaps in the tree belt, the current views of open countryside and hills in the AONB would be partially obstructed and in some instances lost. From the east, views of the proposed development would be prominent, with urban form extending across the open field towards receptors. I consider that, despite the presence of other residential development in the area, the change would be substantial and would adversely affect the enjoyment of users of these footpaths.
44. Taking account of the high sensitivity of receptors, I conclude that the visual effects from viewpoints 10, 11, 12 and 13 in the LVIA would be 'major adverse'. In this regard I differ from the conclusions in the LVIA that the significance of effect from viewpoint 13 would be 'moderate beneficial'. With respect to viewpoints 10 to 12, the LVIA identifies high receptor sensitivity and a low negative magnitude of effect, but does not specify an overall significance of visual effect.

⁹ As suggested, for example, in the revised illustrative masterplan option 2 in the appellant's landscape expert witness proof of evidence (MK-9).

45. Despite the presence of a tree belt to the east, and the site's low topography in the context of surrounding hills, I was also able to observe the site from other medium and long distance viewpoints to the south/south-east. This includes viewpoints 14, 15, 16, 17, 18, 20 and 21 in the LVIA and viewpoints 22 and 23 as identified in the appellant's landscape witness proof of evidence. The distance, however, means that the appeal site is not overly prominent in such views. Furthermore, on my site visit to Blewburton Hill and other locations in the AONB I observed that the appeal site, where visible, is viewed as a small part of a wider panorama set within a back-drop which includes built-form. I therefore consider that the proposed development would have a minor adverse visual effect as seen from public vantage points to the immediate south/south-east (including viewpoints 14 and 18 in the LVIA), and a negligible effect from viewpoints further away. In this regard I disagree with the LVIA's conclusion regarding the significance of effect from viewpoint 14 which is defined as 'moderate beneficial' and from viewpoint 18 which is defined as 'negligible'.
46. I note that the visual inter-relationship of the appeal site and the AONB is a matter of concern to the AONB Management Board¹⁰. However, for the reasons set out above I am satisfied that the proposed development would not detract from the quality of views from the AONB or harm the landscape or scenic qualities of the AONB in this regard.
47. Views towards the AONB are also a material consideration, albeit the main parties agreed at the Inquiry that paragraph 115 of the Framework is not engaged, and I concur with this position¹¹. As described above, the proposed development would result in the loss or partial obstruction of long distant views of the AONB, as seen from New Road and parts of the footpath along the northern edge. As the only significant area of countryside adjoining the east of New Road, these views provide a rare and important local visual link to the AONB, despite their distance. On this basis, and notwithstanding that views of the AONB may be available from within the new estate, I consider the proposed scheme would cause some limited harm to the setting of the AONB. However, due to the distance involved and having regard to the Stroud case¹² I consider this would be insufficient to materially harm the special qualities of the AONB itself.
48. Concerns have also been raised that development would significantly change the character of the appeal site, from open flat farmland characteristic of this part of the AONB setting. However, there is existing and allocated development closer to the AONB than the appeal site, and the tree belt to the east forms a physical and visual barrier from the closest part of the AONB. As such I am satisfied that there would be no notable harm to the setting of the AONB in this regard. There may be some loss of tranquillity, but I consider this would not be significant given the proximity of New Road and other residential development.
49. Overall I consider that the proposed development would cause harm in both landscape and visual terms. Accordingly, and notwithstanding findings in

¹⁰ Having regard to the North Wessex Downs AONB Management Plan (2014) and the North Wessex Downs Position Statement on Setting (2012).

¹¹ Taking account of *Stroud District Council v SSCLG v Gladman Developments Limited* [2015] EWHC 488 (Admin).

¹² *Ibid.*

previous studies¹³, I conclude that the development would have a significant adverse effect on the character and appearance of the area. The proposal would therefore be contrary to Policy CSEN1 in the CS (2012) and Policies G2, G4, C4 and D1 (ii and vi) in the LP (2011), insofar as they seek to protect the district's countryside from adverse development and protect landscape character and setting. As a valued landscape the proposal would be contrary to paragraph 109 in the Framework. The development would not harm the special qualities of the AONB but on the basis of adverse effects on the setting of the AONB would be contrary to Policy CSEN1.

50. My attention has been drawn to decisions by the Secretary of State in 1980 and 1981 relating to appeals on the site¹⁴. I note that ribbon development existed at that time along New Road, and the site was an undeveloped field providing a gap between Didcot and East Hagbourne. Nonetheless, on the basis of other material differences, including the national policy context, the form of proposed development, and subsequent construction of the Fleet Meadow development and estates on the west of New Road, I have attached limited weight to these decisions in my determination of this appeal.

Sustainable development

51. The Council acknowledges it does not have a five year supply of deliverable housing land. The main parties agree that the level of supply stands at 3.9 years, representing a significant shortfall. Although the appellant has indicated that this represents a 'best case' position, there is no substantive evidence before me on this matter or that would lead me to a different position regarding the existence of a significant shortfall.
52. Paragraph 49 of the Framework states that an authority's policies for the supply of housing should not be considered up to date if a five year supply of deliverable housing land cannot be demonstrated. For decision-making this means, as established in paragraph 14, granting permission unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. As part of this process the presumption in favour of sustainable development, or the 'tilted balance' applies¹⁵.
53. At the Inquiry the main parties agreed that Policy CSEN1 in the CS and Policies G2, G4, C4 and D1 in the LP are relevant to the supply of housing. On the basis that the policies seek to control development in the countryside and protect existing settlement patterns and character, I concur with this position. Accordingly I consider the policies are 'out of date' in terms of housing supply.
54. The degree of housing shortfall is significant, and the updated Local Plan and Didcot DPD have not yet been submitted for examination. Nevertheless, the Council appears to have taken a proactive approach to development in Didcot, involving Garden Town status and the establishment of a separate body to drive forward the development of the town. The policies also seek to protect landscape character and setting, and in this regard are consistent with the core

¹³ Including the Didcot Area Housing Study Landscape Considerations (2006) – Machin Bates Associates; Didcot Greenspace Network Feasibility Study (2008) – Chris Blandford Associates; Core Strategy Didcot Background Paper (2011); South Oxfordshire District Council's Strategic Housing Land Availability Assessment 2013.

¹⁴ APP/5355/A/76/3262; and APP/5355/A/80/15595, APP/5355/A/80/15597 and APP/5355/A/81/08194.

¹⁵ Having regard to Cheshire East and SSCLG v Renew Developments Ltd [2016] EWHC 571 and Barker Mills v Test Valley Borough Council and SSCLG [2016] EWHC 3028.

planning principle in the Framework to take account of the different roles and character of different areas and recognise the intrinsic character and beauty of the countryside. Overall I therefore consider that substantial weight should still be attached to the policies¹⁶.

55. The scheme would provide additional housing, including affordable housing, to help meet identified needs. This is a matter to which I attach significant weight, taking into the account the extent of the shortfall outlined above and the identified need for additional affordable housing¹⁷. The emerging Plan indicates that additional greenfield releases will be required in South Oxfordshire to deliver growth over the Plan period.
56. The appeal site is located on the edge of the town and in a sustainable location with access to public transport and other facilities. Didcot is identified as a New Growth Point in the CS and a Garden Town, and the scheme could assist in meeting the housing needs of the town and contributing to job creation and strategic economic investment within the Science Vale area. There could also be some modest benefits to the local economy arising from construction jobs, increased Council tax receipts and New Homes Bonus payments, and additional spending by local residents on local shops and services. Additional publicly accessible open space and play space, connections to existing green infrastructure, and walking/cycling links provided as part of the scheme would also provide a modest social benefit¹⁸. Some biodiversity benefits may also arise from additional landscaping, planting and habitat provision. In these respects the proposal accords with strategic objectives in the CS.
57. The appellant has also highlighted an absence of environmental/landscape designations and other site-specific constraints or problems. However, I consider these to be mitigating factors rather than benefits, and the weight to be attached is therefore limited.
58. The appeal site is Grade 2 agricultural land, and the proposal would therefore result in the loss of best and most versatile agricultural land as defined in the Framework. There is no substantive information before me regarding the existence of alternative poorer quality land. However, in the context of the site's modest size and a lack of evidence that its loss would harm the holding or the farming industry, I have attached only a limited degree of weight to this matter. There is also no evidence before me to suggest that the appeal site is or would be used for local food production, in line with objectives outlined in the Garden Town bid document¹⁹.
59. However, as established above, the proposed development would harm important perceptual and visual attributes of the appeal site, and have a significant adverse effect on the character and appearance of a valued landscape. Some harm would also be caused to the setting of the AONB. The proposal would be contrary to Policy CSEN1 in the CS and Policies G2, G4, C4 and D1 in the LP, and paragraph 109 in the Framework. In the context of this

¹⁶ Taking account of [2016] EWCA Civ 168 *Suffolk Coastal District Council v Hopkins Homes and Richborough Homes v Cheshire East*; APP/Q3115/W/15/3097666 land north of Lower Icknield Way, Chinnor, Oxfordshire; [2016] EWCA Civ 1146 *Gladman Developments Limited v Daventry District Council* and [2016] EWHC 3028 (Admin) *Barker Mills Estates v Test Valley Borough Council*.

¹⁷ Oxfordshire Strategic Housing Market Assessment (2014).

¹⁸ Having regard to needs identified in the Didcot Greenspace Network Feasibility Study (2008) – Chris Blandford Associates.

¹⁹ Expression of Interest in a Greater Didcot Garden Town – South Oxfordshire District Council, Vale of White Horse District Council, Oxfordshire County Council, Oxfordshire Local Enterprise Partnership (CD5.13).

harm, the proposed development would also fail to accord with related strategic objectives in the CS.

60. Overall the substantial environmental harm arising from increased coalescence and to the character and setting of Didcot and East Hagbourne leads me to conclude that the adverse effects of the proposal would significantly and demonstrably outweigh the benefits found. The scheme would therefore fail to represent sustainable development. In the circumstances of this appeal I conclude that the material considerations considered above do not justify making a decision other than in accordance with the development plan.

Recent appeal decisions

61. The Council, appellant and other interested parties have drawn my attention to a number of appeal decisions in South Oxfordshire²⁰ and elsewhere²¹. Nevertheless, landscape and character impact need to be assessed on a case by case basis. Accordingly, I have determined the appeal on the basis of the evidence before me and its merits.

Other Matters

62. An executed Section 106 agreement has been submitted and includes provision for affordable housing. Having regard to the Council's Community Infrastructure Levy (CIL) Compliance Statement and Policy CSH3 in the CS I am satisfied that this obligation is necessary, and is directly related to, and is fairly and reasonably related in scale and kind to, the development. Accordingly this obligation meets the tests within CIL Regulation 122 and I have taken it into account in the decision.
63. The Section 106 agreement makes provision for other obligations. However, these are associated with mitigation. Accordingly, on the basis that I have reached the conclusion that the appeal should be dismissed, there is no need for me to deal with these matters further.
64. The Council has suggested that the scheme is contrary to the settlement hierarchy in Policy CSR1 in the CS, as the built-up part of the scheme would physically adjoin existing residential development in East Hagbourne rather than the southern part of Didcot. However, the appeal site is in a sustainable location and is within walking and cycling distance of services and facilities in the town. The Council also acknowledges that development on the edge of Didcot will be required to meet housing needs over the Plan period. I have therefore attached limited weight to this matter.
65. Local residents have raised other concerns, including light pollution, drainage, traffic impacts, and the precedent the scheme may create for further development. Nonetheless, they have not led me to any different overall conclusion regarding the scheme.

²⁰ Including Mount Hill Farm, High Street, Tetsworth (APP/Q3115/W/15/3136319); Land north of Lower Icknield Way, Chinnor (APP/Q3115/W/15/3097666); Land west of Reading Road, Wallingford (APP/Q3115/W/15/3032691); Thames Farm, Reading Road, Shiplake (APP/Q3115/A/14/2217931); Land adjoining Greenwood Avenue, Chinnor (APP/Q3115/A/14/2229389);

²¹ Including Land off Abbey Road, Sandbach, Cheshire (APP/R0660/W/15/3128707); Land south of Knightcott Road, Banwell, Somerset (APP/D0121/W/15/3138816); 78-88 Brize Norton Road, Minster Lovell, Oxfordshire (APP/D3125/W/16/3143114); Land at Church Farm, Bobbing, Kent (APP/V2255/W/16/3153537); Land at Acorn Way and Derby Road, Spondon, Derby (APP/C1055/W/15/3132386).

66. The appeal scheme was recommended for approval by Council Officers, with no objection from the Landscape Officer. The submitted evidence shows that the illustrative layout of the scheme was the subject of negotiation and an iterative design process between the appellant and Council officers, at pre-application and application stage. However, the democratic planning process in this case involved the final decision being taken by Members. Furthermore, Councils are not bound by pre-application advice provided by officers.

Conclusion

67. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Katie Child

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY

Thomas Cosgrove QC

Instructed by Ian Price, Senior
Litigation and Planning Lawyer, South
Oxfordshire District Council

He called:

Peter Radmall MA B.Phil CMLI

Landscape consultant

Mark Flood BA (Hons) DipTP MRTPI

Planning consultant

FOR THE APPELLANT

James Maurici QC

Instructed by Shoosmiths LLP

He called:

Martin Kelly

Land Planning Director, Capita

Christopher Rees

Savills

FOR THE RULE 6 PARTY

Hashi Mohamed of Counsel

Instructed by Dentons LLP on behalf of Mind the
Green Gap Group (MtGG), Residents Association

He called:

Crispin Topping

MtGG

Nick Wright

MtGG

INTERESTED PERSONS

Marcus Wood	Local resident on behalf of the East Hagbourne Neighbourhood Plan Group
David Rickeard	East Hagbourne Parish Councillor
Iain Duff	East Hagbourne Parish Councillor
Jane Murphy	District Councillor
Anthony Dearlove	Didcot Town Councillor
Charlotte Mitchell	Didcot Garden Town consultant team
Jane Fowles	Didcot Garden Town consultant team
Richard Harding	Chair, South Oxfordshire CPRE
Doug Amos	Local resident
Ann Jenner	Local resident
Andrew Stocks	Local resident
Mary Harrison	Local resident
Richard Eliot	Local resident

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Submission by Didcot Garden Town consultant team (Quod) dated December 2016
- 2 Response by Mr Rees to Greater Didcot Garden Town submission – submitted by the appellant
- 3 Response to Mr Radmall’s Appendix D Visualisations, by Martin Kelly on behalf of Grainger PLC – submitted by the appellant
- 4 Letter from Shoosmiths LLP to the Council regarding the Garden Town consultant team’s submission – submitted by the appellant
- 5 Letter from the Council regarding the Garden Town consultant team’s submission – submitted by the appellant
- 6 MK-10 enlarged extract from MK-1 map showing assumed gap areas referred to in Mr Radmall’s proof of evidence – submitted by the appellant
- 7 Secretary of State decision from 1981 (APP/5355/A/80/15595, APP/5355/A/80/15597/15597 and APP/5355/A/81/08194)
- 8 Extract from the South Oxfordshire Strategic Housing Land Availability Assessment Update (2013) – submitted by the Council
- 9 CIL Compliance Statement – submitted by the Council
- 10 Oxfordshire County Council CIL Compliance Statement – submitted by the District Council
- 11 Opening Statement on behalf of the appellant
- 12 Opening Statement on behalf of the Council
- 13 Opening Statement on behalf of the Rule 6 party (MtGG)
- 14 Appearance list for MtGG
- 15 Appearance list for the Council
- 16 Local Plan timetable – submitted by the Council
- 17 Statement by Marcus Wood, East Hagbourne Neighbourhood Plan Group
- 18 Statement by Charlotte Mitchell BSc MSc, Didcot Garden Town consultant team
- 19 Statement by Jane Fowles BA (Hons) DipLA (Hons) MAUD CMLI, Didcot Garden Town consultant team
- 20 Statement by David Rickeard, East Hagbourne Parish Councillor
- 21 Statement by Iain Duff, East Hagbourne Parish Councillor
- 22 Statement by Richard Harding, Chair of South Oxfordshire CPRE
- 23 Statement by Jane Murphy, Councillor, South Oxfordshire District Council

- 24 Statement by Doug Amos, local resident
- 25 Statement by Anne Jenner, local resident
- 26 Statement by Andrew Stocks, local resident
- 27 Introduction note submitted by Crispin Topping on behalf of MtGG
- 28 List of application drawings
- 29 Statement by Anthony Dearlove, Didcot Town Councillor
- 30 Email from Iain Blair to John Beresford dated 11 January 2017 – submitted by the appellant
- 31 Email from Iain Blair to John Beresford dated 10 January 2017 – submitted by the appellant
- 32 BNP Paribas documents 'Housing the Nation' and 'Researching the Nation' – submitted by the appellant
- 33 Introduction note submitted by Nick Wright on behalf of MtGG
- 34 Photo of appeal site – submitted by MtGG
- 35 Extract from Guidelines for Landscape and Visual Impact Assessments – submitted by the appellant
- 36 Map showing appellant's interpretation of Mr Radmall's view of the gap between Didcot and East Hagbourne – submitted by the appellant
- 37 Inquiry Note regarding Local Plan preparation – submitted by the Council
- 38 Court of Appeal decision [2016] EWCA Civ 1183 SoS and ANR v Claire Engbers – submitted by MtGG
- 39 Draft conditions dated 23 January 2017– submitted by the Council
- 40 Section 106 agreement – submitted by the Council and the appellant
- 41 Summary of Section 106 agreement – submitted by the appellant
- 42 Statement on matters in dispute regarding the Section 106 agreement – submitted by the appellant
- 43 Closing submissions by the Council
- 44 Closing submissions by MtGG
- 45 Closing submissions by the appellant