



Appeal Decision

Site visit made on 1 December 2021

by Mrs H Porter BA(Hons), MSc PGDip, IHBC

an Inspector appointed by the Secretary of State

Decision date: 17th January 2022

Appeal Ref: APP/R3325/W/20/3264973

Land at Lovington Lane, Lovington, Castle Cary, Somerset, BA7 7PY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission
 - The appeal is made by Mr Justin Trott against South Somerset District Council.
 - The application Ref 18/04044/OUT, is dated 19 December 2018.
 - The development proposed is erection of 9 dwellings and associated infrastructure works.
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Decision

1. The appeal is dismissed and planning permission for the erection of 9 dwellings and associated infrastructure works is refused.

Applications for costs

2. An application for costs was made by Mr & Mrs Justin and Heather Trott against South Somerset District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The application was submitted in outline with approval sought for access, layout and scale, with matters of landscaping and appearance reserved for future consideration. I have treated landscaping shown on submitted plans as indicative.
4. The revised National Planning Policy Framework (the Framework) came into force on 20 July 2021, after submission of the appeal. The parties were given the opportunity to comment on the implications of the revised Framework on their respective cases. During the course of the appeal, the Council was unable to demonstrate a 5 year-supply of housing land¹.

Main Issues

5. The Council failed to determine the application within the prescribed period. In light of all that I have read, I consider the main issues in this appeal to be:
 - The effect of the proposed development on the character and appearance of the area;

¹ Calculated at 4.7 years (Council's September 2021 position statement); between 3.66 and 4.7 years (Vail Williams Final comments on Council's Supplementary Statement, December 2021 para 2.2)

- The effect of the proposed development on the settings and significance of designated and non-designated heritage assets; and
- The effect of the proposed development on the nutrient levels in the Somerset Levels and Moors Ramsar site.

Reasons

Character and appearance

6. The appeal site comprises a part of an agricultural field off Lovington Lane in the rural settlement of Lovington. The appeal site has not been allocated for housing in the South Somerset Local Plan 2006 – 2028, 2015 (LP), is located outside of any defined settlement development boundaries, and within the open countryside. Lovington has access to a primary school and a faith facility, two of the key services listed at LP Paragraph 5.39. LP Policy SS2 restricts development in rural settlements other than in a limited number of circumstances and only where it is commensurate with the scale and character of the settlement. LP Policy EQ2 seeks to ensure new development, amongst other things, promotes local distinctiveness, conserves, or enhances, local landscape character and respects local context.
7. Lovington is formed of distinct concentrations of built form, punctuated by pockets of undeveloped green fields. These features characterise Lovington as a small, dispersed settlement in a wider farmed, rural landscape. The appeal site's green, arable nature and the perceptible absence of development affords it a sense of rurality. Notwithstanding the site's relative proximity to the primary school and the cluster of development that extends southwards from it, the character and landscape qualities of the appeal site cause it to assimilate wholly with that of the open countryside.
8. While the appeal site is proximate to the primary school and the 'centre of Lovington cluster', its verdant and open nature influences the important physical and visual separation between one developed cluster and another. While the site's attributes do not, in my view, qualify it as a 'valued landscape' per se, they do contribute to a dispersed settlement pattern that is intrinsic to the local context, and of value to Lovington's landscape character. The rural qualities of the appeal site and the degree of green separation it provides are particularly apparent from the Public Right of Way (PRoW) that runs directly across it.
9. The appeal scheme proposes a courtyard-style development of 9 dwellings laid out at the end of a shared driveway off Lovington Lane. Landscaping is a reserved matter; yet, even with the realisation of play space provision, private gardens and supplementary planting, the scheme would be a not-insignificant urban intrusion. Even with a degree of site containment from the highway, the surface parking and turning areas, plot subdivision and large L-shaped 12-car parking 'barn' would, taken together, diminish the site's characteristically verdant, open and undeveloped nature.
10. The appeal proposal is markedly different to a previous iteration, which proposed development along the Lovington Lane frontage. Nevertheless, the extant scheme would advance an extension of development onto a punctuating green space. Causing a harmful 'creep' of built form into the open countryside,

the proposal would contribute to a gradual erosion of punctuating open space that characterises Lovington as a dispersed rural settlement.

11. The design rationale seeks to replicate a farmstead-type layout. During my site visit, I did see various farmsteads in Lovington, and a variety of building ages and architectural styles. However, courtyard-style farms tend to be characterised by an informal arrangement of working buildings and working yards, together with a farmhouse. Irrespective of the varying dwelling sizes and 'farmhouse', 'barn' and 'cottage' house types, the appeal scheme would comprise a relatively regimented layout of dwellings fronting a turning/parking area, at the end of a long, shared driveway. I consider the layout would be contrived, more akin to a suburban cul-de-sac, lacking the authentic informality of traditional farm complexes in Lovington.
12. In spite of changes over time, including development at the former Pilgrims PH, local distinctiveness continues to be informed by the dispersed settlement pattern characterised by pockets of development punctuated by green fields, which the appeal scheme would undermine. I have borne in mind the various housing schemes that have been, or are being, developed in Lovington, yet none, in my judgement, provides useful comparison to the appeal scheme, in terms of its location, context or landscape characteristics.
13. I therefore find that the proposed development would fail to respect or complement the character and quality of the area, and would, notwithstanding the proposed use of quality materials, not be designed to achieve a high quality. While the harm would be relatively localised, it would be noticeable from the adjacent PRow and would fail to promote local distinctiveness, conserve or enhance landscape character, or respect the local context. Conflict therefore arises with LP Policies SS2 and EQ2, insofar as, amongst other things, these require development respects the character of the settlement; promotes local distinctiveness; conserving and enhancing landscape character and respecting local context. The proposal would not be sympathetic to local character, including the surrounding built environment and landscape setting, thereby also running contrary to paragraph 130 of the Framework.

Heritage Assets

14. Section 66(1) of the Act² imposes a statutory duty on the desirability of preserving a listed building or its setting; while the Framework requires great weight be given to the significance of a designated heritage asset, which can be harmed by development within its setting.
15. The Grade II listed building known as Lovington School with Adjoining Schoolhouse (List entry number: 1277801) is situated just beyond the southern corner of the appeal site. Described as early 19th-century, of local grey lias with stone dressings, the significance and special interest of the listed building lies in its age, architecture, materials and with its historic associations as a place of education and master's accommodation within a small rural village. The green and undeveloped fields and open spaces in the vicinity of the listed school, which include the appeal site and the larger field it is part of, provide a strong link with the building's rural surroundings and make a valuable contribution to its setting.

² The Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act)

16. The proposal would give rise to a suburban form of development on the appeal site and an associated encroachment of built form and domestic activity within the rural setting of Lovington School. As a consequence, legibility of the listed building's rural origins and connection with its verdant, undeveloped surroundings would be harmfully eroded. The Council's conservation officer identified the impact of the proposal on Lovington school as likely to be 'negligible'. This is not a word in the Act, Framework nor LP policy. Rather, I find that the appeal scheme would fail to preserve the listed building's setting, causing harm to the significance of the designated heritage asset. The degree of harm to the setting and significance of Lovington School would, in my judgement, be less than substantial, and within the middle of the scale.
17. The Grade II listed Old Rectory (List entry number: 1346140) is identified as a 16th-century detached cottage of local grey lias and thatched roof and stands on the north side of the B3153 and beyond the wider field of which the appeal site is a part. As an example of a dwelling of some local status associated with the church and considerable age in a rural village setting, the building's historic associations, architectural execution and surviving historic fabric are all aspects of its special interest and significance. Despite the changes over time, significance is also derived from the continued legibility of the building's location within a small rural settlement and the agricultural land around it forms a part of its setting.
18. Irrespective of intervisibility or supplementary planting, the appeal scheme would reduce the open, agricultural landscape that is of value to the setting and significance of the Old Rectory. Some less than substantial harm, albeit at the lower end of the scale, to the significance of the heritage asset from development within its setting would result.
19. Failure to preserve the setting of listed buildings runs counter to the statutory provisions of Section 66(1) of the Act. Conflict also arises with LP Policy EQ3, which seeks to safeguard or enhance the significance, character, setting and distinctiveness of heritage assets. In both instances, the degree of harm to the setting and significance of designated heritage assets would be less than substantial, which the Framework indicates should be weighed against the public benefits of the proposal. I turn to this in my overall heritage and planning balance.
20. The Council have identified the appeal site itself as a non-designated heritage asset. The significance of the non-designated heritage asset lies in the historic interest of extant archaeological remains just below its surface, a remnant of Lovington's settlement evolution and rural land management. Inevitably, the proposal would directly harm the non-designated heritage asset through instigating modern urban intrusion and activity onto it. Although the scale of the harm could potentially be lessened, such as using non-dig foundations or permeable surfacing, the proposal would fail to conserve or enhance the significance and local distinctiveness of the heritage asset, conflicting with LP Policy EQ3.

Somerset Levels and Moors Ramsar Site

21. In-combination effects of new development can increase phosphate output and have detrimental effects on the Somerset Levels and Moors Ramsar protected site, which the appeal site is within the catchment of.

22. The appellant has submitted phosphorus budget calculations, which indicate a wetland with surrounding meadow on 0.2ha of additional land will be required to achieve phosphate neutrality. It is unclear whether Natural England or the Council's ecologist is content with the mitigation measures proposed, nor how the proposed the water treatment infrastructure would be connected and laid out. The site may be some 13km from the Ramsar site, however, as the competent authority, it would be incumbent on me to carry out the HRA, and the information provided is insufficient to ascertain whether mitigation measures to control phosphates through water treatment would appropriately deal with any adverse effects resulting from the proposals, their effectiveness, or that they can be secured.
23. Given the 'Dutch-N' European Court of Justice ruling requires greater scrutiny on plans on projects that will increase nutrient loads and may affect habitats designated under the Habitats Regulations 2017. Bearing in mind the outstanding level of detail, I am not satisfied this issue can be left to a Grampian-style condition, nor dealt with through landscaping at the reserved matters stage.
24. The proposed development therefore conflicts with LP Policies EQ4 and EQ7 insofar as these seek to protect the biodiversity value of internationally protected sites and ensure development that, on its own or cumulatively, would result in, amongst other things, water quality or other environmental pollution that would be mitigated to an acceptable level. It has not been demonstrably shown that the proposal would not result in the deterioration of irreplaceable habitats; nor that potential significant harm resulting from the development in combination with other developments, can be adequately mitigated. Consequently, the proposal conflicts with paragraph 180 of the Framework.

Other Matters

25. I have found the Council's contention that the location of the appeal site would preclude safe access to services in Lovington lacks substance. I also did not see any wall close to the site's entrance that would be demolished as part of the proposals. These matters therefore do not weigh against the appeal scheme.
26. I note the frustrations of the appellant in their dealings with the Council over their proposals. However, this is not a matter for me in deciding the appeal. I have seen the alternative site layout provided, but as the appeal process should not be used to evolve a scheme I have dealt with the appeal on the basis of the drawings that were submitted for determination to the Council and on which interested parties' views were sought. If the Appellant considers amending their proposal would result in an improved scheme, they should make a fresh planning application. The pre-application and earlier application responses I have read concern either a different site or include proposals at Church Farm and are therefore not directly comparable. In any case, I have reached my decision based on the merits and site-specific circumstances of the case before me.

Heritage and Planning balance

27. The public benefits of the proposal include the delivery of market housing, which would contribute to the provision of homes in the District, in an accepted situation where there is a less than five-year housing land supply. The delivery of housing on the appeal site would be an area with access to some services

and facilities, which would boost the supply and choice of homes. Irrespective of the extent of the shortfall, the under-supply situation means the delivery of nine dwellings would be a significant benefit, which carries heavy weighting in favour of the scheme.

28. The proposal would enhance the local economy, including creating jobs associated with the construction stage and new residents are likely to support existing services such as the primary school. These beneficial factors would be common to any such development and, with no evidence to suggest local services are in particular need of the proposal, they carry moderate weight.
29. However, considerable importance and weight attaches to the desirability of preserving the settings of listed buildings, of which two would be harmed by the proposals. Less than substantial harm should not be equated with less than substantial planning objection. The public benefits associated with the appeal proposal do not present cumulatively considerable weight to be added in the heritage balance set out in paragraph 202 of the Framework. Additionally, statutory duties to preserve listed buildings and their settings have not been met.
30. The proposals are not in accordance with LP Policy SS2, EQ3, EQ4 and EQ7. There would be harm to the character and appearance of the site and the settlement of Lovington. Irrespective of an absence of harm in respect of pedestrian access, the appeal scheme clearly runs counter to the development plan, against which planning decisions should be made unless material considerations indicate otherwise.
31. The Council is unable to demonstrate a 5-year supply of housing land, triggering the operation of footnote 8 of the Framework and paragraph 11(d). However, my findings in respect of the designated habitats and designated heritage assets, in my judgement, provide a clear reason for refusing the development, thus, even if I were to conclude there is a shortfall in the five-year housing land supply on the scale suggested by the appellant, the tilted balance does not apply. Even if it did, I consider that, assessed against the policies in the Framework as a whole, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits.

Conclusion

32. For the reasons given above, I conclude that planning permission should not be granted and the appeal should be dismissed.

Mrs H Porter

INSPECTOR