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## Appeal Decision

Site visit made on 27 August 2019

**by S. Rennie BSc (Hons), BA (Hons), MA, MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 30 October 2019**

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**Appeal Ref: APP/Y3940/W/19/3227188**

**Land Southwest of Middleton Road, Winterslow, Wiltshire SP5 1RU**

- 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 Primetower Properties against the decision of Wiltshire Council.
  - The application Ref 18/01942/OUT, dated 28 February 2017, was refused by notice dated 26 November 2018.
  - The development proposed is described as 'Outline application (all matters reserved except access) to erect up to 22 market dwellings, 9 affordable dwellings, and 4 elderly bungalows; provide a new access from Middleton Road and pedestrian footpath alongside Middleton Road; provide circa 4,500m<sup>2</sup> of public open space including 'LAP' children's play area, ecological buffer to Brown's Copse, and drainage detention basin (resubmission of application 17/02002/OUT).'
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### Decision

1. The appeal is dismissed.

### Application for costs

2. An application for costs was made by Primetower Properties against Wiltshire Council. This application is the subject of a separate Decision.

### Procedural Matters

3. The appeal seeks outline permission with all matters reserved except for access. In so far as the submitted plans and drawings show details of matters other than the access, I have treated those as being purely illustrative.
4. An amended masterplan (ref: SAV1141010 1MP-01 Rev K) and vision splays plan (Ref: 028.0011.008 A) has been submitted with the appeal but were not before the Council at the time of their decision to refuse the planning application. The additional plans, together with the other additional documentation, do not alter the proposals materially or, in my opinion, result in any interested party being prejudiced in this appeal process.
5. Following information submitted with the appeal the Council has confirmed they do not wish to pursue their reasons for refusal Nos 4 and 5, relating to archaeology and access respectively.
6. I have taken the description of development from the appellant's Appeal Form, as this appears to be a more accurate description of the proposals at this stage. It is also reflected in the description on the Council's reason for refusal.

## Main Issues

7. The main issues are:

- Whether the location for the development is appropriate given that it is outside the settlement boundary of Winterslow.
- The effect of the development on the character and appearance of the area, which is a designated Special Landscape Area.
- The effect of the development on the ecological value and habitats of Brown's Copse which includes ancient woodland and is designated as a County Wildlife Site.
- Whether the proposal provides sufficiently towards affordable housing need, as part of a mixed community.
- Whether the proposal would sufficiently address the need for waste collection and control.

## Reasons

### *Policy Background to proposal*

8. The proposed residential development is set outside of the defined Settlement Boundary of the village of Middle Winterslow, in what is a field adjacent to the village edge.
9. The Council have a 'Settlement Strategy' (Core Policy 1) which has identified settlements where sustainable development could take place. Core Policy 23 has identified Winterslow as a 'large village' as it has a limited range of facilities and employment opportunities. Housing development within large villages, according to Core Policy 1, will be limited to that needed to help meet the housing needs of these settlements.
10. However, this site is outside of the defined settlement boundary of Winterslow (albeit adjacent to this designated boundary). In this regard paragraph 4.16 of the Core Strategy states there is a general presumption against development outside the defined limits of settlement boundaries of settlements including large villages.
11. As set out in the delivery strategy of Core Policy 2, development outside the defined limits of settlement boundaries will not be permitted, other in circumstances where the type of development is permitted through other policies in the Development Plan. The site does not fully meet the requirements of any other policy in the Plan for housing outside of a settlement boundary. Furthermore, the site has not been allocated for housing development in the Development Plan or through a Neighbourhood Plan.
12. Therefore, the proposal would be contrary to Core Policy 1, Core Policy 2 and Core Policy 23 of the Wiltshire Core Strategy. These policies seek to, amongst other things, provide a settlement strategy to focus development into sustainable settlements and to restrict proposals where it would be outside the limits of existing settlement development.

13. I recognise that in response to this matter, the appellant has raised the issue of the Council's lack of a sufficient housing land supply, which the Council has confirmed. This is an issue I shall return to in the 'planning balance' section later in this decision.

*Ecological value and habitats*

14. The site lies adjacent to Brown's Copse, which is an area of woodland of approximately 2.3ha. The Council Ecologist has highlighted that this is a mix of ancient woodland (17 ancient woodland indicator species are recorded) and lowland deciduous mixed woodland, which is a 'priority habitat' under the 'Natural Environment and Rural Communities Act 2006'. Furthermore, the copse is a designated County Wildlife Site.
15. For these reasons Brown's Copse is of high local biodiversity value. In this regard Core Policy 50 of the Wiltshire Core Strategy states that "Sustainable development will avoid direct and indirect impacts upon local sites through sensitive site location and layout, and by maintaining sufficient buffers and ecological connectivity with the wider environment". This policy goes on to say that damage or disturbance is generally unacceptable, though does say there can be exceptional circumstances where such impact cannot be avoided, or when the impacts are reduced as much as possible.
16. The proposal does include a buffer between the proposed houses which would be public open space. However, whilst there are no pedestrian links proposed into the woodland, it is reasonable to assume that some future occupiers would go into the woodland area given the close proximity, for walking their dogs or for children to play and explore, for example.
17. The Council Ecologist has recognised that there is some evidence of people using Brown's Copse for recreation, with "play camps" for example, but the level of activity did not appear "intrusive". This would also be my observation from my site visit.
18. However, the construction of a major development of dwellings so close to this area of woodland would likely result in more people recreationally using the woodland, maybe on a more frequent basis, as it would be so close. This could have an impact by way of disturbance or destructive behaviour, whether people are conscious or not of this impact. This would be an indirect impact to this local wildlife site, which should be assessed to evaluate the environmental sensitivity of the site thoroughly and the results of these potential impacts. However, whilst some mitigation has been included, such as the buffer zone, such a full ecological impact assessment has not been submitted to thoroughly assess the potential cumulative impacts of the development on Brown's Copse.
19. The site is designated as a 'Village Green' and so has a history of being used by the village public. This is not disputed by the Council, but there is no substantive evidence provided that this is a high baseline figure of usage. The concern is that the proposal is for a major housing development immediately next to the woodland which could significantly increase recreational use and have implications to habitats, for example.
20. In other similar matters, there has also been surveys submitted by the appellant regarding species within the site itself. The Council regard the site as having "at least moderate, if not high suitability for bats". In this regard it does

appear that the submitted survey has not fully considered the significance of the hedgerow along Middleton Road for bats, which is important as part of this hedgerow would be removed. The Council has also raised the issue of the length of time period the 'harp trappings' were used to establish bat activity in and around Brown's Copse, among other examples where more detectors could have been used to give a fuller characterisation of bat activity at the site.

21. Furthermore, the surveys used from 2016 are now out of date and the Council has stated the need for updated surveys. Indeed, this has been recognised in the appellant's 'Ecological Appraisal' when updated in 2019 (submitted by the Council with their evidence, although it relates to the revised planning application for this site currently under consideration), which says that survey data is now out of date and therefore would need to be updated to ensure the mitigation proposed is "proportional and effective". To try to address this issue, the appellant has taken a 'worst-case scenario' approach towards mitigation. However, without the full survey data I am not satisfied that this mitigation would be suitable or effective without full and up-to-date data of the bat population and activity at the site.
22. In the Council reason for refusal on this matter the Council raised the issue of Dormice, but from the latest Council Ecologist comment I can see that it was recommended that no further survey work is required with the woodland considered as sub-optimal for dormice. As such, there appears to be no dispute on this matter.
23. The Council Ecologist has raised some other issues, such as the lack of detail of the receptor site for reptiles, and the need for more information regarding hedgerows. However, the submitted survey does provide information about both these issues which I would consider sufficient at this stage. These are also matters not included with the Council reason for refusal.
24. Overall, being that the development is to be sited adjacent to irreplaceable ancient woodland and is an important local wildlife site, there would need to be more information as to the direct and indirect potential impacts from the new houses proposed. This could set out means to avoid or mitigate adverse impacts if necessary. Furthermore, there is a lack of full and up-to-date information about bats at the site. For these reasons it has not been sufficiently demonstrated that there would not be harm to the ecological value of Brown's Copse or to protected bat species at the site.
25. Whilst some ecological enhancements are proposed, considering all the above the proposal is contrary to policy CP50 of the Wiltshire Core Strategy, which seeks to, amongst other things, protect local sites from damage or disturbance and ensure no net loss of local biodiversity resource. The proposal would also be contrary to the Framework, particularly paragraphs 174 and 175, which state that biodiversity should be enhanced and protected, and that development which would result in the loss or deterioration of irreplaceable habitats (such as ancient woodland) should be refused.

#### *Character and Appearance – Landscape Impact*

26. The site is within a Special Landscape Area (SLA), adjacent to the village of Middle Winterslow. The site is part of an agricultural field and is bounded on all sides by residential areas of the village, other than the wooded area known as Brown's Copse to the south.

27. The proposal is for dwellings on the site. As it is currently a field there would inevitably be a significant change in the character and appearance of the site, with an urbanising effect as a result of these new houses.
28. The appellant has submitted a Landscape and Visual Impact Assessment (LVIA) (Terra Firma Consultancy Ltd – February 2019). This LVIA does recognise that there would be a significant adverse effect to the landscape and the setting of the adjacent Public Right of Way (PROW) as the development would constitute development of an open field. However, it concludes that this impact would be some localised with no significant residual effect to the wider landscape.
29. The site is quite well enclosed by surrounding houses and Brown's Copse, which would, to some extent, minimize the wider visual impact of the development. The development would be seen against the backdrop of the village.
30. However, the site is within an SLA and is currently an open field. There would be a significant impact to the landscape, which would be clearly visible from many receptor points, even if they are mainly close to the site itself, such as from the PROW or surrounding village streets.
31. Whilst the proposal would have mainly a localised impact, it would still have an adverse impact on this part of the SLA and the rural landscape. Policy CP51 of the Wiltshire Core Strategy states that development should "protect, conserve and where possible enhance landscape character and must not have a harmful impact upon landscape character". In this case there would be an adverse impact to the rural landscape character of the site, particularly when viewed more locally. There may be other parts of the SLA which have a higher quality, but this is still a rural location which positively contributes towards this special landscape. The proposal would therefore be contrary to saved policy C6 of the Salisbury District Local Plan 2003, and policies CP51 and CP57 of the Wiltshire Core Strategy, which, amongst other things, seeks the retention of important landscapes.
32. I note the Council has made comments also with regards the masterplan layout of the proposal, but this is an indicative plan and could be changed at Reserved Matters stage. As such, I do not find any harm to the character and appearance of the area as a result of the design and layout of the development as indicated.

#### *Provision of Affordable Housing*

33. The Wiltshire Core Strategy with Core Policy 43 sets out the requirement for affordable housing (AH) with new development. As the site is within the Salisbury area the requirement stands at 40% for a new development of over 10 dwellings, based on the Wiltshire Local Plan Viability Study 2014.
34. For the proposed development there is therefore a requirement to provide 14 affordable units within a scheme of 35 dwellings. The Council confirm there is a need for affordable housing in the area, particularly 1, 2 and 3 bedroom houses. The current proposal for 9 affordable dwellings (as included in the submitted Unilateral Undertaking (UU)) is significantly below the 40% requirement.
35. The appellant points to policy CP43 stating that the provision of AH may vary on a site-by-site basis. The appellant states that, as identified within policy

CP45, a local needs survey is credible evidence to show housing need in an area. To this end, the appellant has included information from the Parish Needs Survey (2017) for Winterslow which shows a need for 9 affordable dwellings of either subsidised rent or shared ownership/discount market homes.

36. However, the Council has stated that this Survey was based on only the responses given and may not represent the full housing need of the Parish. The Parish Council did not have a high amount of respondents to provide a comprehensive view of affordable housing need. Indeed the Survey states that this may not be a representation of the full need within the Parish. Furthermore, this Survey concludes that the results indicate a minimum need over the next three years for new affordable housing, and therefore the provision of 9 dwellings is not a maximum.
37. Whilst this survey is evidence, it does not provide more than what the Council has described as a 'snapshot' of affordable housing need at the time it was conducted and does not represent the Parish's full housing need. The need could also have changed in the almost 2 years since the publication of the survey. Finally, further comment from the Council as to the current position of affordable housing need stated that the needs of the whole Community Area should be considered which would allow the Council to cascade out the affordable housing provision and on this basis there is a need from 80 households.
38. Overall, I am not convinced that the evidence submitted by the appellant is sufficient to demonstrate that there is not the requirement to provide 40% affordable housing as part of the development. The appellant has indicated that they might be willing to provide more affordable housing, but this is not what has been included in their submitted legal agreement. As such, the proposal does not accord with Core Policy 43 of the Wiltshire Core Strategy as there is a lack of provision of affordable housing as part of the development. The proposal would not therefore contribute adequately towards a mixed and inclusive community within the village and wider area.

#### *Waste*

39. The Council has stated that the proposal needs to make a contribution towards waste and recycling facilities of £3,185. This relates to the additional requirement of waste/recycling containers needed, due to the increase in households as a result of the proposed residential development. This requirement is in line with Core Policy 3, Policy WCS6 of the Wiltshire and Swindon Waste Core Strategy and the Wiltshire Planning Obligations Supplementary Planning Document (SPD) (Adopted May 2015).
40. The contributions would be necessary to make the development acceptable in planning terms, being directly related to the development, and fairly and reasonably related in scale and kind to the development, in accordance with the CIL Regulations, as amended.
41. The appellant has included the waste contribution with the submitted legal agreement. As such, the proposal has met this requirement which is necessary for the development to be acceptable, in addressing the waste collection issue that would transpire from the new proposed residential development.



42. As such, in this regard, the proposal is in accordance with policies CP3 of the Wiltshire Core Strategy, and policy WCS 6 of the Waste Core Strategy. These policies seek to, amongst other things, to address waste recovery from the site. The proposal also does not meet with the requirements set out in the Waste storage and collection: guidance for developers Supplementary Planning Document.

### *Planning Balance*

43. The appellant has argued that this is a suitable location for additional housing, being that the Council cannot demonstrate a 5 year housing land supply. The Council, having considered the latest information has confirmed that the Council are unable to demonstrate a 5-year housing land supply.
44. It is therefore not disputed between the parties that the Council cannot demonstrate a deliverable five year housing land supply. However, Paragraph 11 of the Framework, in setting out the presumption in favour of sustainable development, is clear that where specific policies in the Framework, including those relating to habitat sites and irreplaceable habitats, indicate that development should be restricted, the "tilted balance" is not engaged (Footnote 6 of the Framework).
45. In this case, as can be seen above in this Decision Letter, I have found there to be potential harm to irreplaceable habitats and so the tilted balance is not engaged.
46. Nonetheless, in terms of benefits, the proposal would provide dwellings, including affordable housing, which could help to support local services and the vitality of the village. The affordable housing could also provide for younger families potentially, in a reasonably accessible location. The site would also be closely located to existing housing. The proposal also includes new pedestrian links which could improve permeability through this part of the village, and there would be open space provided.
47. I also acknowledge that there has been letters and petitions of support, which I have taken into consideration.
48. However, the harm identified above would be significant and as a result sustainable development would not be achieved. When assessed against the policies in the Framework taken as a whole the adverse impacts would significantly and demonstrably outweigh the benefits. Therefore, the proposal would not be a sustainable form of development. The conflict with the development plan is not outweighed by other considerations, including the Framework.

### **Conclusion**

49. For the reasons given above the appeal is dismissed.

*S. Rennie*

INSPECTOR