



## Appeal Decision

Site visit made on 24 February 2025

by Juliet Rogers BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 April 2025

**Appeal Ref: APP/W0340/W/24/3349957**

**Land rear of Londis Convenience Store, High Street, Chieveley, Newbury  
RG20 8UR**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Mr Oliver Bryant of Chesterton Commercial Group against the decision of West Berkshire District Council.
- The application Ref is 23/01577/FUL.
- The development proposed is the demolition of industrial units and pigsty, and the construction of 4no. dwellings and parking provision.

### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. I have removed details that are not development from the description above.
3. The Council is currently undertaking a review of the Local Plan. However, I have not been presented with any policies within the emerging plan that are relevant to this appeal.
4. The appeal site is located within the catchment of the River Lambourn Special Area of Conservation (SAC). Although not a reason for refusal on the Council's decision notice, as the competent authority in relation to this appeal, I am required to consider this matter and the related duties under the Conservation of Habitats and Species Regulations 2017 (the Habitat Regulations).

### Main Issues

5. The main issues are:
  - whether the proposed development would be likely to have a significant effect on the integrity of the River Lambourn SAC;
  - the effect of the proposed development on the character and appearance of the area, with specific regard to the Chieveley Conservation Area (CCA) and the North West Downs National Landscape (NWDNL);
  - whether the quantum and functionality of the proposed private outdoor space would provide future occupiers with adequate living conditions; and
  - the effect of the proposed development on the living conditions of existing occupiers of Bakers Flat and Southleigh Flat, with respect to privacy.

## Reasons

### *Integrity of the SAC*

6. The nature conservation interest of the River Lambourn SAC results from its part ephemeral or 'winterbourne' nature. It is one example of the least-modified chalk streams in England, supporting a qualifying water course habitat of submerged and floating vegetation as well as populations of qualifying fish species.
7. All parts of the river system have been assessed as being in an 'unfavourable recovering' condition. Consequently, the conservation objective for the SAC is to restore and maintain the extent, distribution, structure and function of its qualifying natural habitats and those of its qualifying species so that it achieves a favourable conservation status. The current condition of the SAC primarily results from significant increases in phosphorous levels within the wastewater draining into the river system. Further pollution, including as a result of an increase in wastewater from new residential development, would exacerbate this condition.
8. Therefore, comprising new residential development the appeal scheme would lead to an increase in the amount of wastewater draining into the SAC and, as a result, it is therefore likely that it would, when taken both in isolation and cumulatively with other projects, have a significant adverse effect on the integrity of the SAC. Consequently, I am required to conduct an Appropriate Assessment concerning this effect.
9. In order to avoid or mitigate these significant adverse effects, the appellant has submitted a signed and dated Unilateral Undertaking (UU). This obligates the appellant, on the grant of planning permission, to cease the agricultural use of an agreed amount of land within their ownership (the mitigation land), replacing it with an area of woodland. The removal of the mitigation land from agricultural use would lead to a reduction in the amount of phosphorous draining into the SAC. This reduction has been calculated as sufficient to mitigate the discharge likely to be generated as a result of the proposed development and has been agreed with the Council and Natural England (NE).
10. I conclude that the use of a legal agreement, such as a UU, is necessary to make the development acceptable in planning terms, directly related and fairly and reasonably related in scale and kind to it, as required by the National Planning Policy Framework (the Framework). Nonetheless, given the mitigation land would remain in private ownership, there is a high risk that, for the duration of the residential use of the appeal site (or at least 80 years as required by NE), effective mitigation would not be secured. The UU is therefore required to provide sufficient certainty that this would be achieved.
11. The UU stipulates that monitoring reports should be submitted to the Council at specific intervals, including a record of phosphorous levels and further evidence demonstrating the mitigation land is being managed and maintained effectively. The Council also have the ability to inspect the site. Should the monitoring reports demonstrate that the mitigation land is not being managed or maintained in accordance with the UU, the report must set out the steps the appellant is taking to remedy this and the timescales.
12. However, there is no explicit mechanism within the UU which would allow the Council to approve or request amendments to these reports, particularly should

there be a need to remediate the land. Additionally, whilst the obligations contained within the agreement would pass to any successors in title, the Council has no step in rights should the mitigation land be mismanaged or sold to another owner. Therefore, the UU, as currently drafted, does not provide sufficient certainty that the mitigation proposed would be effectively secured for the duration of the development (or at least 80 years).

13. I conclude that the proposed development would be likely to have a significant effect on the integrity of the River Lambourn SAC, contrary to the requirements of the Habitat Regulations.

*Character and appearance*

14. Located to the rear of existing development which lines the High Street, part of the appeal site lies within the CCA. The significance of the CCA, insofar as it relates to this appeal, is predominantly derived from the architectural quality, features, materials and age of the built form therein. Whilst a variety of dwelling scales are located within the CCA, including some large and some modest in size, few are taller than two storeys. Although a large proportion of buildings have hipped roofs, a key feature of the CCA is the variety of roofscapes present which add interest to the street scene. Red brick and clay tiled roofs are the predominately used materials.
15. Alike the settlement as a whole, the CCA has a linear character, with many buildings focused along the High Street. Closest to the site, on either side of the Londis store, dwellings are located immediately adjacent to the pavement or arranged more informally behind low front walls. Gaps in the built form permit glimpses of the development behind, including the structures on the appeal site, set against the backdrop of the NWDNL. Combined with the derelict condition, bulk and industrial appearance of the existing structures on the site, the areas of overgrown scrubland or brambles and the largely unmade hard surfaces contribute little to the significance of the CCA.
16. The proposed development would replace the existing structures on the site with four dwellings, comprising two pairs of semi-detached, two-storey dwellings. The incorporation of gable end projections punctuating each end of the semi-detached structures would create variety and interest to the roofscapes of the proposed dwellings, reflecting the forms found elsewhere in the CCA. The proposed arrangement of the modestly sized dwellings would create an intimate and discrete development that provides a transition from the closely knit linear built form on the High Street and the more spacious setting of the detached dwellings also accessed from Church Lane. It would not, therefore, have a domineering or cramped relationship to either built form grain.
17. Although the use of slate tiles and white render is not commonplace within the CCA, such materials are, nonetheless, present. In any event, had I been minded to allow this appeal, a condition requiring details of the materials to be submitted to and approved by the Council would have been imposed.
18. Through the removal of the derelict buildings on the site, the proposed development would, as a result, lead to an enhancement of the character and appearance of the area, including the preservation of the CCA. In so doing, it

would further the statutory purposes of the NWDNL as a nationally important area designated due to its high scenic quality, as required by the LURA<sup>1</sup>.

19. Several listed buildings are located close to the appeal site, including the Grade II\* Church of St Mary and Chieveley House, in addition to the Grade II Chieveley Manor and the outbuilding, wall, gate and piers associated with Chieveley House. However, given the distance and the intervening built form between the listed buildings and the appeal site, the proposed development would not harm the setting of these heritage assets.
20. I conclude that the proposed development would not harm the character and appearance of the area, with specific regard to the desirability of preserving or enhancing the character or appearance of the CCA, as required by the Act<sup>2</sup>, and furthering the statutory purposes of the NWDNL. It would accord with policies CS14 and CS19 of the West Berkshire Core Strategy 2006-2026 (the Core Strategy) which, together, seek to ensure new development is appropriate to the scale, design and context of its location, conserve heritage assets whilst also making an efficient use of land, amongst other provisions.

#### *Living conditions – future occupiers*

21. The private garden space for the dwellings on Plots 1, 3 and 4 would be below the area set out in the Council's Quality Design Supplementary Planning Document (the Design SPD) for dwellings comprising 3 or more bedrooms. However, the Design SPD is clear that the areas indicated are a general guide and that it is the quality of the outdoor space that matters most.
22. As shown on the Concept Block Plan<sup>3</sup>, the garden areas of all the proposed dwellings are able to accommodate covered lockable bicycle sheds, wheelie bins, space for sitting outside and children's play. Therefore, they would provide sufficient space to support the everyday needs of future occupiers of the proposed development. The existing boundary features alongside Sowbury House and The Chase, together with the proposed fencing adjacent to the courtyard to the rear of Londis, would provide future occupiers with the level of privacy and security reasonably expected within a residential environment.
23. I conclude that the quantum and functionality of the proposed private outdoor space would provide future occupiers with adequate living conditions and accords with Policy CS14 of the Core Strategy and the Design SPD in this respect.

#### *Living conditions – existing occupiers*

24. A total of six rooflights are proposed in the roofscape of Plots 1 and 2, of which four would serve the single bedroom for each dwelling (a pair of rooflights per bedroom). Given the height of these windows, when fully open views of the rooms served by the windows of the two flats located adjacent and above the convenience store would be possible. Therefore, existing occupiers of Bakers Flat and Southleigh Flat, would be likely to experience some loss of privacy when using the room served by these windows. However, the use of obscured glass in the aforementioned rooflights, secured via a suitably imposed condition, would prevent any loss of actual or perceived privacy.

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<sup>1</sup> Levelling-up and Regeneration Act 2023 (LURA)

<sup>2</sup> Section 71(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act)

<sup>3</sup> Dwg No 21-24-251 rev F – Concept Block Plan

25. At first floor level, a window is proposed in the rear elevation of Plot 2, serving a bedroom. Although this would be positioned opposite the ground and first floor windows of the Bakers Flat, the floor plans<sup>4</sup> for Plot 2 show this window to be fitted with obscure glazing. Any actual or perceived loss of privacy to the existing occupiers of the Bakers Flat would, therefore, be negligible. No vertical windows are proposed at first floor level in the rear elevation of Plot 1.
26. Furthermore, given the rear boundary of the site would be fenced at a far lower height than the existing industrial structures and the rear elevation of the proposed dwellings set back beyond that, the scale and quality of the outlook from these flats' windows would be increased and, as a consequence, improved. This would be beneficial to the living conditions of the existing occupiers of these flats.
27. Subject to the imposition of a suitably worded condition, I conclude that the proposed development would not harm the living conditions of existing occupiers of Bakers Flat and Southleigh Flat, with respect to privacy, and would accord with Policy CS14 of the Core Strategy and the Design SPD in this regard.

### **Other Matters**

28. The proposed development would provide social and economic benefits from the construction and occupation of four additional dwellings, in support of the Framework's objective of significantly boosting the supply of housing. The redevelopment of a brownfield site within a 'services village' also weighs in favour of the proposed development. Such social and economic benefits would, however, be moderate given the scale of the scheme. Limited detail of the environmental benefits which would be derived from the appeal scheme are before me.
29. The character and appearance of the CCA would be enhanced by the proposed development and is, consequently, supported by the provisions of policies CS14 and CS19 of the Core Strategy. In accordance with these policies and the Framework, I attribute great weight to this effect.
30. The evidence before me indicates that the Council is unable to demonstrate a five-year supply of deliverable housing sites in accordance with the Framework. Whilst the extent of the shortfall is not before me, the provisions of paragraph 11 of the Framework are triggered. However, at paragraph 11di, the Framework confirms that the presumption in favour of sustainable development does not apply where the application of policies therein that protect areas of particular importance provide a strong reason for refusing the development. This includes habitat sites (footnote 7), such as the River Lambourn SAC.
31. Having regard to my findings that the development would be likely to have a significant effect on the integrity of the SAC, the application of the Framework's policies regarding the protection of habitat sites provides a strong reason for refusing the development. Consequently, the presumption in favour of sustainable development does not apply in this case.

### **Planning Balance and Conclusion**

32. I have concluded that the proposed development would not harm the character and appearance of the area nor the living conditions of neighbouring occupiers, and it would provide future occupiers with adequate living conditions. However, as

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<sup>4</sup> Dwg No 21-24-253 – Plots 1 and 2 Floor Plans and Elevations

it would be likely to have a significant effect on the integrity of the SAC, it conflicts with the Habitat Regulations. I attribute significant weight to the harm which would result. Such harm is not outweighed by the great weight I attribute to the enhancement of the CCA and the moderate weight derived from the social and economic benefits of the appeal scheme.

33. Therefore, I conclude that the proposed development is contrary to the development plan as a whole and material considerations, including the provisions of the Framework, do not indicate that the proposed development should be determined other than in accordance with it.
34. For the reasons set out above, having had regard to all relevant matters raised, the appeal should be dismissed.

*Juliet Rogers*

INSPECTOR