
Appeal Decision

Site visit made on 31 August 2016

by David Walker MA MRTPI

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

Decision date: 14th October 2016

Appeal Ref: APP/F1610/W/16/3151151

Land off Huxley Court, South Cerney, Gloucestershire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Colburn Homes Ltd against the decision of Cotswold District Council.
 - The application Ref 15/02156/FUL, dated 20 May 2015, was refused by notice dated 6 January 2016.
 - The development proposed is the construction of 3 No. dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of 3 No. dwellings at Land off Huxley Court, South Cerney, Gloucestershire in accordance with the terms of the application, Ref 15/02156/FUL, dated 20 May 2015, subject to the conditions in the attached Annexe.

Main Issue

2. Following the judgement¹ of the Court of Appeal which upheld the Secretary of State's Written Ministerial Statement of 28 November 2014, the Council has confirmed that its reason for refusal No 2 has been withdrawn and that it is no longer seeking an affordable housing contribution from the development.
3. I therefore consider the main issue in the appeal to be the effect of the proposal on the character and appearance of the area.

Reasons

4. The appeal site is located on the shoreline of Lake 16 of the Cotswold Water Park at a position at the fringe of South Cerney. It is a relatively prominent position visible from across the open expanse of the lake but with a backdrop of woodland and the ongoing residential development at 'Cerney on the Water' being undertaken by Redrow Homes.
5. It is an evolving backdrop, however, as nine large detached water-side houses forming part of the Cerney on the Water development were nearing completion at the time of my site inspection. These introduce a massing of development at the shoreline at this part of the lake. I acknowledge that an Inspector in an earlier appeal decision² at the site noted that these nine houses were located

¹ Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council C1/2015/2559; [2016] EWCA Civ 441.

² Appeal ref APP/F1610/A/14/2223640.

around an inlet of the lake and I do not disagree. However, the full impact of the scale of these houses is only fully apparent at their advanced stage of construction. In conjunction with the earlier phases of the Cerney on the Water housing development therefore I find the area around the appeal site to be edge of settlement in character, rather than rural.

6. The proposal is a revised scheme for three large detached houses. They would be in a reduced site and at a different position to the five houses dismissed in the previous appeal. Positioned adjacent to the nine houses of the Cerney on the Water development they would appear as a continuation of the recent pattern of development around the peninsula. As the Council has indicated its acceptance of the individual designs of the three houses only the effect of the pattern of development on the character and appearance of the area is before me for consideration.
7. Therefore, while the nine houses under construction do not extend around the peninsula they are not obscured by any foreground planting and so the full extent of their scale and massing, including a 30m flank wall, is clearly visible. In this context, three additional large houses would increase the amount of built form, but not appreciably so. New planting between the proposed houses with an easterly aspect would help to soften the impact of both the existing and proposed built form at this position.
8. Additionally, the wooded area of land that would have been removed in the previous scheme would be retained as a landscaped area. A landscape appraisal³ accompanying the planning application explains that the restoration of the lake bank and inclusion of native marginal planting would provide landscape and ecological enhancements. These would be significant benefits weighing in favour of the proposals and which could be supplemented with the provision of a connecting footpath link between the Cerney on the Water development and a permissive path to the north.
9. Of the policies of the Cotswold District Local Plan 2006 (the Local Plan) referred to in the reason for refusal, saved Policy 42 relates to the detailed design considerations of the Cotswold Design Code including respecting the character of setting. It is largely complied with as a result of the Council's acceptance of the house designs. Saved Policy UT.1 applies specifically to the Cotswold Water Park and requires the maintenance or enhancement of the conservation interests of the Water Park and retention and/or enhancement of landscape features. With landscaping and appropriate management, as can be secured by a condition, I am satisfied that the requirements of both saved Policies 42 and UT.1 of the Local Plan would be fulfilled.
10. My attention has also been brought to saved Policy 19 of the Local Plan relating to development outside of settlement boundaries. The proposal would conflict with the policy. However, there is agreement between the parties that the housing strategy policies of the Local Plan are time expired. On this basis the presumption in favour of sustainable development set out at paragraph 14 of the National Planning Policy Framework (the Framework) is engaged.
11. There would undoubtedly be some change to the environment of the shoreline at this part of Lake 16. However, in applying the test set out at the fourth bullet point of paragraph 14, I do not find significant and demonstrable adverse

³ Landscape and Visual Impact Appraisal, Lake 16 South Cerney (MHP, May 2015)

impacts that would outweigh the benefits to the community of three additional houses and associated landscape enhancements. The proposal would accordingly amount to a sustainable development under the Framework, to which I afford significant weight as a material consideration, outweighing the conflict with saved Policy 19 of the Local Plan.

Other Matters

12. In reaching my findings, I am mindful of the matters raised by interested parties in connection with ecology, noise and dust, traffic and parking, and the desirability of a buffer to the Cerney on the Water development. I note that the Council raises no ecology objection and, subject to the provision of suitable landscaping and management as I intend to secure by conditions, I have no reason to disagree. As noise and dust issues are controlled under other legislation I have not addressed them further. Traffic and parking has not given rise to any objections from the Council and I note that the Highway Authority considered the access at Huxley Court to be suitable during the previous planning application. Given my observations on the pattern of development along the shoreline and the scope for additional landscape integration, I find no need for any additional buffer between the proposal and the houses under construction.

Conditions

13. The appeal being allowed, I have had regard to the suggested conditions provided by the parties. In addition to the standard time for implementation condition I identify the plans approved in the interests of certainty.
14. Further details of a landscape and ecology management plan (LEMP) and the proposed connecting footpath link, and compliance with the submitted Ecological Appraisal, are necessary to secure the landscape and ecological benefits I have identified. To these I add the requirement for a tree protection plan to safeguard the existing trees of the site, and details of existing and proposed ground levels in the interests of certainty. Details of a scheme for drainage are necessary to ensure adequate waste water management. With regards to paragraph 109 of the Framework a scheme is also necessary to address the Environment Agency's requirements surrounding ground contamination.
15. As the foregoing matters are fundamental to the development permitted it necessary that the details required are agreed with the local planning authority before any development is commenced. Further details are also necessary in respect of external materials and finishes and I attach suitably worded conditions for these to be provided for approval prior to their installation.

Conclusion

16. For the reasons given above, and with regard to the development plan read as a whole and the Framework, I conclude that the appeal should be allowed subject to conditions.

David Walker

INSPECTOR

Annexe

Schedule of conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan at scale 1:2,500; Site Plan ref 7725/50 Rev A; Plans and Elevations House Type A ref 7725/51 Rev A; Plans and Elevations House Type B ref 7725/52 Rev A; Plans and Elevations House Type A1 ref 7725/53 Rev A; and Plans and Elevations Garages ref 7725/54.
- 3) Prior to the commencement of the development hereby permitted, plans showing the existing and proposed ground levels at the site, the finished floor levels, the eaves and ridge heights of the proposed buildings and any neighbouring buildings adjacent to the site, shall be submitted to and approved in writing by the Local Planning Authority (such levels and heights shall be datums above sea level). The development shall only be carried out in accordance with the agreed details.
- 4) Development shall not begin until drainage works have been carried out in accordance with details to be submitted to and approved in writing by the local planning authority.
- 5) Prior to the commencement of any work on site (including demolition and site clearance); a Tree Protection Plan (TPP) shall be submitted to and approved in writing by the Local Planning Authority. The TPP shall be a scaled drawing prepared by an arboriculturalist showing the finished layout proposals, tree retention, tree/landscape protection measures and Construction Exclusion Zones (CEZs) – all in accordance with BS5837:2012 'Trees in relation to design, demolition and construction – recommendations'. Tree protection measures shown on the TPP must be put in place prior to the commencement of any works on site (including demolition and site clearance) and shall not be removed without the written approval of the Local Planning Authority. Fires on site should be avoided if possible. Where they are unavoidable, they should not be lit where heat could affect foliage or branches. The potential size of the fire and the wind direction should be taken into account when determining its location, and it should be attended at all times until safe to leave. Existing ground levels must remain the same within CEZs and no building materials or surplus soil shall be stored therein. All service runs shall fall outside CEZs unless otherwise approved by the Local Planning Authority.
- 6) No development shall take place until an assessment of the nature and extent of contamination has been submitted to and approved in writing by the Local Planning Authority. This assessment shall consider any contamination on the site, whether or not it originates on the site. Moreover, it must include:
 - (i) A 'desk study' report documenting the site history, environmental setting and character, related to an initial concept model of potential pollutant linkages;
 - (ii) A site investigation, establishing the ground conditions of the site, a survey of the extent, scale and nature of contamination;

- (iii) A 'developed conceptual model' of the potential pollutant linkages with an assessment of the risks to:
- human health
 - property (existing or proposed) including buildings, and service lines and pipes
 - adjoining land
 - groundwaters and surface waters, and
 - ecological systems.
- 7) No development shall take place until a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health, buildings and other property and the natural environment has been submitted to and approved in writing by the Local Planning Authority. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, an appraisal of remedial options, and proposal of the preferred option(s), and a timetable of works and site management procedures. The scheme must ensure that the site will not qualify as contaminated land under Part 2A of the Environmental Protection Act 1990 in relation to the intended use of the land after remediation.
- 8) The remediation scheme, as agreed in writing by the Local Planning Authority, shall be fully implemented in accordance with the approved timetable of works and before the development hereby permitted is first occupied. Any variation to the scheme shall be agreed in writing with the Local Planning Authority in advance of works being undertaken. On completion of the works the developer shall submit to the Local Planning Authority written confirmation that all works were completed in accordance with the agreed details.
- 9) In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing within 2 days to the Local Planning Authority and development must be halted on the part of the site affected by the unexpected contamination. An assessment must be undertaken in accordance with the requirements of *condition 6*, and where remediation is necessary a remediation scheme, together with a timetable for implementation, must be submitted to and approved in writing by the Local Planning Authority in accordance with the requirements of *condition 7*. The measures in the approved remediation scheme must then be implemented in accordance with the approved timetable. Following completion of measures identified in the approved remediation scheme written confirmation that all works were completed must be submitted to and approved in writing by the Local Planning Authority in accordance with *condition 8*.
- 10) Prior to the commencement of development, a detailed scheme for a footpath link for pedestrians between the woodland to the west, and the permissive footpath to the northeast shall be submitted to and agreed in writing by the Local Planning Authority. None of the dwellings shall be occupied until the approved footpath scheme has been constructed in accordance with the approved plans, and shall thereafter be maintained and made available in perpetuity.

- 11) No development shall take place until a 10 year landscape and ecological management plan (LEMP) for the site has been submitted to and approved in writing by the Local Planning Authority. The LEMP shall include:
- (i) long term landscape and ecological objectives,
 - (ii) appropriate management prescriptions,
 - (iii) maintenance schedules, including annual work programmes for the first five years,
 - (iv) habitat features, for example bird nesting and bat roost provision on built structures, and
 - (v) monitoring schedule, including annual reporting to the Local Planning Authority.

All works must be carried out as per the approved LEMP unless otherwise agreed in writing by the Local Planning Authority.

- 12) All development works shall be carried out in accordance with the Recommendations in section 5 of the 'Ecological Appraisal to Inform Design' (AD Ecology Ltd, May 2015) and illustrated landscape drawing. All proposed mitigation must be completed before the three dwellings are first brought into use and thereafter maintained in perpetuity.
- 13) Prior to the construction of any external wall of the development hereby approved, samples of the proposed walling and roofing materials shall be approved in writing by the Local Planning Authority and only the approved materials shall be used.
- 14) Prior to the construction of any external wall of the development hereby approved, a sample panel of walling of at least one metre square in size showing the proposed stone colour, coursing, bonding, treatment of corners, method of pointing and mix and colour of mortar shall be erected on the site and subsequently approved in writing by the Local Planning Authority and the walls shall be constructed only in the same way as the approved panel. The panel shall be retained on site until the completion of the development.
- 15) No external woodwork shall be installed until a sample of the external woodwork finished in the proposed colour has first been submitted to and approved in writing by the Local Planning Authority. The external woodwork shall be finished and thereafter retained as approved.
- 16) No windows, external doors, balconies, chimneys, rooflights shall be installed/inserted/constructed in the development hereby approved, until their design and details have been submitted to and approved in writing by the Local Planning Authority. The design and details shall be accompanied by drawings to a minimum scale of 1:5 with full size moulding cross section profiles, elevations and section. The development shall only be carried in accordance with the approved details and retained as such at all times.

End of schedule