
Appeal Decision

Site visit made on 21 July 2017

by H Baugh-Jones BA(Hons) DipLA MA CMLI

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

Decision date: 04 August 2017

Appeal Ref: APP/G1630/W/17/3172841

**Land at Hillview Stables, Hillview Stables, Bushcombe Lane,
Woodmancote, Cheltenham**

- 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 Mr James Duggan against the decision of Tewkesbury Borough Council.
 - The application Ref 16/00860/FUL, dated 22 July 2016, was refused by notice dated 14 March 2017.
 - The development proposed is erection of a single dwelling.
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Decision

1. The appeal is allowed and planning permission is granted for erection of a single dwelling at in accordance with the terms of the application, Ref 16/00860/FUL, dated 22 July 2016, subject to the conditions set out in the Schedule to this decision.

Main Issues

2. The main issues in this appeal are (i) whether the proposal would be an acceptable form of development in this location; and (ii) its effects on the character and appearance of the area having particular regard to the Cotswolds Area of Outstanding Natural Beauty (AONB).

Reasons

3. The appeal site lies outside of, albeit next to the Woodmancote settlement boundary as defined in the Tewkesbury Borough Local Plan (2006) (LP). LP policy HOU4 states that outside the residential development boundaries, new residential development will only be permitted where it would be essential to the efficient operation agriculture or forestry, involve the acceptable conversion of an existing building or provide affordable housing. The proposal would not accord with any of these requirements and therefore conflicts with policy HOU4.
4. The Council considers that because it can demonstrate a five year housing land supply (HLS), policy HOU4 is up-to-date. However, whilst there is no contention over the HLS in this appeal, for the reasons that follow I disagree with the Council's view on the status of policy HOU4.
5. The LP sets out policies to guide decision making up to the end of the plan period of 2011 and is therefore time-expired. Policy HOU4 operates in conjunction with other LP policies to exert control over the location of housing.

These policies derive from previous government advice and reflect the housing requirements and the approach to the distribution of housing in the now revoked Structure Plan and Regional Planning Guidance for the South West. As such, they are not based on any objective assessment of housing need as required by the National Planning Policy Framework (the Framework). In addition, policy HOU4 applies a more restrictive approach to development in the countryside than the Framework.

6. For these reasons, I consider policy HOU4 to be out-of-date and that the 4th bullet point of Framework paragraph 14 applies. This says that for decision taking, where the development plan is absent, silent or relevant policies are out-of-date, planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole; or specific Framework policies indicate that development should be restricted. Although the Framework does not alter the primacy of the development plan, it is nonetheless a material consideration that carries substantial weight.
7. Having said that, as the Council can demonstrate a five year HLS, its development plan policies are functioning to significantly boost the supply of housing in line with the Framework requirement to do so. Thus they can be given some weight. Nevertheless, for the reasons given above, I consider that weight to be limited.
8. Woodmancote is identified as a Service Village in the Main Modifications version of the Joint Core Strategy¹ (JCS) and thus, a suitable location for some limited residential development. Although the JCS does not yet form part of the adopted development plan, it nonetheless clearly indicates the direction of travel in respect of where the Council sees development being located.
9. The appeal site is reasonably well-located to provide access to shops and services within the village and a little further away at Bishops Cleeve. I acknowledge the lack of pavements along Bushcombe Lane and consider that regular walking to shops and services would not be an attractive option, particularly after dark and during periods of wet weather. Similarly, the narrowness of the lane might discourage cycling. However, some local services could be accessed by the nearby Public Rights of Way (PROWs) that lead into the urban area, thereby avoiding the need to walk along Bushcombe Lane.
10. Nevertheless, journeys made by car would be of short duration with the likely number of trips limited to those commensurate with the occupancy of a single family dwelling. On balance, I consider that the development would be sited to minimise the use of private motorised transport and make a modest contribution to the local economy during its construction and afterwards through the use of local shops and services by its occupants. It would therefore generally fulfil the social and economic roles forming two of the three dimensions of sustainable development as couched in the Framework. I therefore now turn to consider whether it would fulfil an environmental role.
11. The appeal site lies wholly within the AONB. Having regard to paragraph 14 of the Framework, footnote 9 of the document gives examples of specific Framework policies that indicate development should be restricted. This includes development in AONBs.

¹ Joint Core Strategy – Gloucester, Cheltenham, Tewkesbury Submission Version November 2014

12. Paragraph 115 of the Framework says that 'great weight' should be given to conserving landscape and scenic beauty in such designated areas. It goes on to say at paragraph 116, that planning permission should be refused for major developments in these designated areas except in exceptional circumstances and where it can be demonstrated they are in the public interest. The proposal in this case is for a single dwelling so cannot reasonably be considered as falling within the category of 'major development'. Moreover, it is important to note that the Framework does not place a blanket restriction on all development in AONBs.
13. I note that the Landscape Strategy and Guidelines for the AONB identify the site as falling within the Escarpment Character Type and describe the lower escarpment slopes as having less sensitivity to change. This pragmatic approach serves to demonstrate that the AONB could accommodate change provided it does not offend the reasons why the landscape was designated.
14. The appeal site is located on lower lying land next to the built-up area and is surrounded on three sides by development, including the existing stables. It is well-screened from Bushcombe Lane by mature trees and hedges although its southern boundary is open and the site can clearly be seen from the PRoWs that pass close by. However, the presence of the existing built-up area is omnipresent in these views and it therefore significantly influences the character of the appeal site.
15. Furthermore, there is an outdoor riding area next to the site and the surrounding land has been subdivided with various types of fencing to create a number of horse paddocks. The combination of all these things creates the sense that the site sits within an urban fringe landscape and places its character apart from the more rugged scrubby and wooded land forming part of the character of the escarpment to the north and east.
16. In more distant vistas from along the PRoWs where they cross the areas of higher land to the east, the site is not readily discernible as being separate from the built-up area. At certain points, views are also filtered by trees and hedges. The proposed dwelling would appear against the urban backdrop and in any case, it would be difficult to visually distinguish it from other built development.
17. The proposed development would not in my view, appear incongruous or visually intrusive in that context. It would also fit in to the pattern of development formed by the loose ribbon of dwellings and other buildings that extends along Bushcombe Lane. The dwelling would also only be of a single storey, which would help to visually sit it down in the landscape. This would be assisted further by its use of materials and sloping mono-pitched roof elements. The proposals also include a significant amount of new planting, which would help to assimilate the dwelling into the landscape and prevent it from being seen as an urban encroachment into the countryside in nearby views. This planting could be secured by means of a suitably worded planning condition and would also increase the overall attractiveness of this part of the AONB.
18. I recognise that there would be some loss of views to the upper slopes across the site from the PRoW next to the edge of the settlement. However, any restriction on these views would be short lived and would not have a material effect on the overall appreciation of the AONB landscape.

19. For the above reasons, I find that the proposal would not result in harmful effects on the AONB's landscape and scenic beauty and it would therefore accord with the Framework objectives to conserve and enhance the natural environment.
20. Policy SD8 of the JCS sets out a requirement that development within or adjacent to the AONB conserves and where appropriate, enhances its landscape, scenic beauty, wildlife, cultural heritage and other special qualities. This is consistent with both the Framework and the statutory duty to have regard to conserving and enhancing the scenic beauty of AONBs as laid down by Section 85 (S.85) of the Countryside and Rights of Way Act 2000 (the CRoW Act).
21. In my view, the close alignment of policy SD8 with the Framework and CRoW Act S.85 means it should be given substantial weight in the determination of this appeal. This reflects the advice given in Framework paragraph 216. The proposed development would also, therefore, be acceptable when assessed against JCS Policy SD8, and the CRoW Act S.85.

Other matters

Designated heritage assets

22. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, (the Act) requires the decision maker to have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. Framework paragraph 132 advises that substantial harm to such buildings and their settings should be exceptional.
23. The site lies opposite a grade II listed building and therefore has the potential to affect its setting. However, the mature vegetation along the southern side of Bushcombe Lane would prevent the two buildings being seen in the same view and the considerable visual presence of the listed building would be maintained unfettered. There is no indication from the evidence before me that there would be any loss of vegetation within the site. Consequently, the appeal proposal would not result in harm to the setting of the heritage asset.
24. Part of the appellant's case is that the dwelling would assist in the closer monitoring of horses stabled at Hillview Stables. This need has been disputed by a number of interested parties. However, regardless of whether the appellant has a justifiable case in relation to this specific matter, there is no requirement in national planning policy or statutory legislation to demonstrate the existence of any such circumstances unless the proposal would comprise a major development within the AONB. I have already found that it would not and as such, do not consider this matter further.
25. It has been put to me that to allow the appeal would set a precedent for further applications for development in the AONB. However, no directly similar/comparable sites to which this might apply have been put forward. Each application and appeal must be determined on its individual merits, and a generalised concern of this nature does not justify withholding permission in this case.
26. Other matters raised include the effect on the local highway network next to the site and flooding. In the absence of substantive evidence to indicate

otherwise and given that there are no objections from the relevant statutory consultees, there is no sound basis to find against the proposal on either of these grounds.

27. Finally, an interested party has also suggested that a covenant should be applied restricting the use of the entire property. I do not have the power to set covenants as these are private matters between landowners. I may impose conditions but do not consider that the restriction suggested would meet the tests of necessity or reasonableness.

Conditions

28. I have had regard to the various conditions suggested by the Council. I have amended the wordings where necessary in the interests of clarity and precision and to more closely reflect the paragraph 206 of the Framework and national Planning Practice Guidance (PPG).
29. I note the Council's suggested condition requiring the development to be carried out within five years but have limited this to three years in line with Section 51(1)(a) of the Planning and Compulsory Purchase Act 2004. I have imposed a condition specifying the approved drawings as this provides certainty. In order to ensure the appearance of the development is satisfactory, having particular regard to the AONB, I have imposed conditions relating to materials, soft landscaping, levels and tree protection. As levels are a fundamental consideration at the outset, a pre-commencement condition is necessary. In the interests of highway safety, a condition is imposed relating to a vehicle parking and turning area.
30. In order to protect the water environment and in the interests of flood protection, I have imposed a condition relating to drainage. However, there is no certainty at this stage on the potential for a sustainable drainage (SuDS) method. I am not persuaded that even if it were not possible to drain the site by the use of SuDS, that it would be necessary to refuse planning permission. Consequently, I have imposed a variation to the suggested condition. I note the evidence relating to the presence of archaeological remains and have imposed a condition requiring the submission of a written scheme of investigation.
31. Given the site's location within the AONB and having regard to the Statutory Duty thereto, I consider it necessary to remove permitted development rights in order to restrict the enlargement of the dwelling and the erection or construction of any other features subject to the grant of planning permission. In so doing I have also had regard to the paragraph 206 of the Framework and PPG.

Planning Balance and Conclusion

32. I have assessed the appeal proposal against the Framework presumption in favour of sustainable development and the provisions of the emerging JCS, having also had regard to the CRow Act statutory duty. In so doing, I recognise that the proposed development would result in a change to part of the AONB. However, the site represents only a very small part of the wider protected landscape and it is within an area less sensitive to change than the higher escarpment land. Furthermore, I have not found that the appeal proposal would result in harm to the setting of designated heritage assets.

33. Therefore, on balance and having had regard to all other matters raised, the appeal succeeds.

Hayden Baugh-Jones

Inspector

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 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 Drawing No A – P – 100 – 01b; Proposed Elevations: Facing South + West Drawing No A – P – 200 – 01; Proposed Elevations: Facing North + East Drawing No A – P – 200 – 02a; Proposed Sections Drawing No A – P – 300 – 01; Ground Floor Plan Drawing No A – P – 100 – 02b; Site + Proposed Roof Plan Drawing No A – P – 100 – 03a.
- 3) Notwithstanding the details on the submitted application form and the submitted drawing nos A – P – 200 – 01; A – P – 200 – 02a; and A – P – 300 – 01, no development shall take place until samples of the materials to be used in the construction of the external surfaces of the building hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) Before the development is occupied, full details of soft landscape works shall be submitted to and approved in writing by the local planning authority and these works shall be carried out as approved. These details shall include planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants, noting species, plant sizes and proposed numbers/densities where appropriate.
- 5) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 6) The dwelling shall not be occupied until vehicle parking and turning area shall have been constructed in accordance with the approved plans. The vehicle parking/turning area shall be retained thereafter for those purposes.
- 7) No development shall take place until full details of the finished levels, above ordnance datum, of the ground floor(s) of the proposed building(s), in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.

- 8) The dwelling shall not be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
 - i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - ii) include a timetable for its implementation; and,
 - iii) provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
- 9) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no garages, extensions or garden sheds shall be erected or constructed.
- 10) No development shall take place within the area within the red line boundary shown on the submitted drawing no A – P – 100 – 01b until a Written Scheme of Investigation shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research questions - and if indicated by the Desk Top Study submitted with the application:
 - i) the programme and methodology of site investigation and recording;
 - ii) the programme for post investigation assessment;
 - iii) the provision to be made for analysis of the site investigation and recording;
 - iv) the provision to be made for publication and dissemination of the analysis and records of the site investigation;
 - v) the provision to be made for archive deposition of the analysis and records of the site investigation;
 - vi) the nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.
- 11) The development hereby permitted shall be constructed in accordance with the details in the Arboricultural Impact Assessment and Tree Protection Plan by BoskyTrees dated 7 July 2016.