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## Appeal Decision

Hearing held on 9 August 2017

Site visit made on 9 August 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: 23 August 2017**

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**Appeal Ref: APP/G1630/W/17/3174525**

**Land to the North of 15 Bloxhams Orchard, Ashleworth, Gloucester GL19 4JB**

- 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 Danwood Homes against the decision of Tewkesbury Borough Council.
  - The application Ref 16/01442/OUT, dated 19 December 2016, was refused by notice dated 21 March 2017.
  - The development proposed is erection of 6 no. dwellings, with all matters reserved for future consideration except for access.
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### Decision

1. The appeal is dismissed.

### Procedural Matters

2. The application is in outline with only access to be considered at this stage. I have determined the appeal on this basis. I have nonetheless had regard to the submitted indicative layout plans as they provide a logical indication of how the development could be laid out.
3. The description of development in the heading above is taken from the appeal form. This differs from that given on the application form which sought permission for 8 dwellings and relates to the submission of an amended proposal submitted in advance of the Council's determination of the application. The Council determined the application on the basis of the 8 dwellings scheme. However, the amended plan was posted on the Council's website and was referred to in the officer's report. At the Hearing, it was confirmed that the scheme for 6 dwellings had been brought to the attention of Ashleworth Parish Council. Following a considerable amount of discussion, the parties agreed to accept the amended description for the lesser number of dwellings. On balance, I am satisfied that although the amended proposal was not publicised in the usual way by the Council, it was made publicly available and interested parties have had the opportunity to comment on it. Accordingly, no-one's case is prejudiced by my consideration of the appeal on the basis of the 6 dwellings scheme.
4. Before the Hearing, I received submissions from the main parties with regard to a recent appeal decision relating to a development at Hillview Stables,

Woodmancote, which is also within the Council's administrative area. I have taken these into account in my decision.

## **Main Issues**

5. From all that has been put to me, the main issues in this appeal are (i) whether the proposal would be an acceptable form of development in the location proposed having regard to the weight to be given to relevant development plan policies and the Council's housing land supply (HLS); (ii) its effects on the character and appearance of the area; and (iii) its effects on flood risk.

## **Reasons**

### *Development plan policies and HLS*

6. The appeal site is located outside of but immediately adjoining the built-up area boundary of Ashleworth 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.
7. At the Hearing, the Council argued that even though policy HOU4 sits within a time-expired development plan, it should be given full weight because it can demonstrate a 5 year HLS and has provided HLS calculations based on two scenarios. The first of these only includes sites within Tewkesbury Borough that are not identified in the emerging Joint Core Strategy (JCS) i.e. excluding those that would make a contribution to the needs of neighbouring authority areas (the policy-on scenario). The second includes strategic allocations at Brockworth and Leckhampton as part of an adopted JCS (the policy-off scenario). In the first scenario, the Council's figures show a 5.3 year HLS with the application of a 20% buffer and a 6.61 year HLS in the second, also with a 20% buffer applied. This equates to an oversupply of 160 and 860 dwellings respectively.
8. The appellant's position is that because a total of 246 dwellings are based on schemes with a resolution to grant permission pending section 106 Agreements, they should not be included in the figures as there is no guarantee that they will come forward within 5 years. National Planning Practice Guidance<sup>1</sup> sets out what constitutes a 'deliverable site' in the context of housing policy. It says that deliverable sites could include those that are allocated for housing in the development plan and sites with planning permission unless there is clear evidence that schemes will not be implemented within 5 years. It goes on to say that local planning authorities will need to provide robust, up to date evidence to support the deliverability of sites.
9. In the event that all of these dwellings did not come forward within 5 years, in the policy-on scenario, there would be an undersupply of 86 dwellings. This would bring the HLS under the 5 year threshold. The Council has provided a Housing Supply Deliverability Schedule which includes the consented Brockworth and Leckhampton schemes.

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<sup>1</sup> Paragraph: 031 Reference ID: 3-031-20140306

10. Although the appellant argued that some of the schemes in the Council's Housing Supply Deliverability Schedule will not come forward, only anecdotal evidence was provided to challenge the Council's assessment. Furthermore, the Council's figures include a 22% lapse rate and I consider them to be robust. It therefore seems unlikely to me, particularly in the absence of any substantive evidence to the contrary, that all of the 246 dwellings will not come forward.
11. The appellant also considers the build out rates on a site at Cooper's Edge to be over-optimistic, which would result in a further reduction in the deliverable housing numbers. However, this argument is based on the 40 dwellings per annum associated with one sales outlet, when, in fact there are two sales outlets on that site. Therefore, based on the 186 outstanding dwellings to be built, even at a 40 per annum build rate, over the 5 year period, the full development would be built out.
12. On the basis of the evidence before me, I am satisfied that even in the event that some or all of the previously mentioned 246 dwellings did not come forward, the Council can demonstrate a 5 year HLS. It is therefore evident that policy HOU4 is not a barrier to development and is functioning, along with other relevant development plan policies to boost significantly the supply of housing in accordance with paragraph 47 of the National Planning Policy Framework (the Framework).
13. Nevertheless, policy HOU4 is more restrictive than national policy expressed in the Framework as it exerts a blanket restriction on development in the countryside whereas the Framework does not. Paragraph 215 of the Framework says that due weight should be given to relevant policies in existing plans according to their degree of consistency with the Framework and the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given.
14. The Courts have examined the link between paragraphs 215 and 14 of the Framework<sup>2</sup> and judged that any inconsistency between development plan policies and the Framework would render them out-of-date, thus engaging paragraph 14. It is therefore clear that development plan policies can be out-of-date even where a local planning authority has a 5 year HLS.
15. I therefore consider that the 4<sup>th</sup> 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 statutory development plan, it is nonetheless a material consideration that I consider carries substantial weight.
16. The proposal would add to the availability of housing and provide some economic benefits both during construction through the provision of labour and materials and subsequently from the economic uplift from new residents supporting local shops and services. It would therefore generally accord with the economic and social dimensions of sustainable development as couched in

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<sup>2</sup> Colman v SSCLG [2013] EWHC 1138 (Admin)

the Framework. I therefore turn now to consider the proposal against the environmental dimension of sustainable development.

*Character and appearance*

17. The irregular shaped site has mature trees and overgrown hedgerows along its northern and western boundaries and to a lesser extent along the southern boundary where it abuts the edge of the built-up area. A Public Right of Way (PRoW) runs diagonally across the eastern part of the site and follows the line of an overgrown hedgerow that visually and physically separates the easternmost part of the site from the majority of the site to the west. The part of the site to the west of the PRoW is currently overgrown with ruderal vegetation whereas its eastern part has a character more akin to that of the surrounding agricultural landscape. The site has a relatively pronounced change in topography with a fall from north-west to south-east.
18. From the PRoW, because there is less vegetation along the site's southern boundary, some of the upper floors, but mainly only the roofs of a small number of existing dwellings are visible through a gap in the hedgerow that crosses the site. However, the urban edge is not so prominent that it has a significant influence on the character of the site or its immediate surroundings. Accordingly, the PRoW has the character of a rural route away from the built-up area.
19. In the vast majority of views from the PRoW, the proposed development would not be readily apparent except at close quarters. However, it would nonetheless bring built form much closer to it. Given that there is no dispute that the PRoW is a well-used local route, I consider that there would be some, albeit limited harm to the experience of those using it.
20. Whilst much of the site is well-screened in most of the available views and despite its current appearance, it nonetheless reads as part of the network of varying sized fields around the settlement edge and thus appears distinct from the neighbouring built-up area. Accordingly, it shares a greater affinity with the surrounding open countryside than to the built-up area.
21. The appellant accepts that the proposal would result in some degree of urbanisation but suggests it would nonetheless be acceptable, given the minimal visual effects because of its containment by the existing trees and hedgerows. However, the hedgerows that bound the site and run along the route of the PRoW are to my mind, components of the rural landscape because they reflect the character of the rural surroundings and contribute to creating the general field pattern to the east of the village. Accordingly, despite the screening the existing hedgerows provide, the development would appear as an urban encroachment into the rural landscape, which would be particularly noticeable in the winter months when they were less foliated.
22. For the above reasons, I consider that the proposed development would have an substantial adverse effect on the character and appearance of the area. It would thereby run counter to saved LP policy LND3 that seeks to prevent development where it would, amongst other things, have a detrimental visual effect on the character of the landscape associated with the Severn Vale. Whilst not criteria based, this policy accords with the broad objectives of the Framework to protect the intrinsic beauty of the countryside and I give it substantial weight.

23. The proposal would also run counter to emerging JCS policies SD5 and SD7. These policies respectively seek to ensure that new development respects the character of the site and its surroundings and protects landscape character for its own intrinsic beauty.
24. I accept that these policies do not yet form part of an adopted development plan but the JCS is at an advanced stage and on the basis of the evidence put to me, I am satisfied that they are not subject to unresolved objections and that they closely reflect the policies in the Framework. Thus, in accordance with Framework paragraph 216, I give them significant weight.

#### *Flood risk*

25. The Council acknowledges that the majority of the site is not classed as being at risk as it falls within Flood Zone 1 but nevertheless expressed concern about the absence of clear information to demonstrate that the proposed development would not result in unacceptable effects on flooding. However, the Council accepted at the Hearing, that it would be possible to mitigate flood risk by technical measures albeit that they may be prohibitive due to their cost.
26. The Council's Flood Risk Action Plan sets out that Ashleworth is classified as being of medium risk based on the 2007 flooding event wherein one property was affected in Bloxhams Orchard. In response to this, Gloucester County Council undertook drainage works to alleviate the situation.
27. I accept that the alleviation works may not have eradicated the risk of flooding. However, there is no compelling evidence to indicate that the proposal cannot provide adequate drainage using sustainable systems (SuDS). The appellant points out that the area to the east of the PRoW could contain a suitably sized balancing pond to accommodate water run-off from the development. I have no reason to doubt this and am satisfied that it would be possible to incorporate SuDS measures to provide adequate drainage such that the development itself and that surrounding it would not be at unacceptable risk of flooding. It was agreed by the main parties that these are matters that could be addressed by means of a suitably worded planning condition in the event of permission being granted.
28. For the above reasons, the proposal would accord with saved LP policies EVT5 and EVT9 that respectively, seek to safeguard new development and its surroundings from flooding and demonstrate that provision can be made for SuDS. The proposal also accords with emerging policy INF3 in that it would minimise flood risk and incorporate SuDS. This policy broadly accords with the Framework.

#### **Planning Balance and Conclusion**

29. The Council can demonstrate a 5 year HLS and although this does not provide a ceiling to development, its existence limits the weight I give to the social benefits of the appeal scheme from the modest increase in housing and the likely economic uplift benefits. The absence of any clear identified need for the type of dwellings proposed also limits the weight I attach to the scheme's benefits.

30. I have taken into account the conclusions of the Inspector in the Nup End appeal<sup>3</sup>, which related to a site on the north-western edge of Ashleworth. The Inspector judged that although the development would result in a detrimental urbanising effect, the economic and social benefits of the scheme outweighed that environmental harm. The Nup End appeal was considered under different circumstances as the Council could not demonstrate a 5 year HLS at the time and also the scheme made provision for affordable housing within the 35 dwellings proposed. I am not therefore persuaded that the proposal before me can easily be equated with that other scheme and in any case, each application and appeal must be considered on its individual merits.
31. On balance, I consider the substantial harm I have found to the setting of the settlement and the limited adverse effects on users of the local PRow network would significantly and demonstrably outweigh the scheme's limited benefits. I acknowledge that the proposal could provide for a new area of public open space in the eastern part of the site. However, there is no mechanism before me to secure such use in perpetuity. Furthermore, it is a small area and any benefits it might provide would be off-set by the harm to the character and appearance of the area. Thus, the provision of such space is a neutral factor in my consideration of the appeal.
32. For the above reasons and having had regard to all other matters raised, the proposal would not be sustainable development and the appeal does not succeed.

*Hayden Baugh-Jones*

Inspector

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<sup>3</sup> APP/G1630/W/16/3150236

## **APPEARANCES**

### **FOR THE APPELLANT:**

Russell Ranford                                      Urban Aspects

### **FOR THE LOCAL PLANNING AUTHORITY:**

Emma Blackwood

Cheryl Lester

Catherine Ashby

Matt Barker

Jason Westmoreland

Paul Skelton

### **INTERESTED PERSONS:**

Tony Eardley                                      Ashleworth Parish Council

## **DOCUMENTS SUBMITTED AT THE HEARING**

1. Tewkesbury Borough Local Plan Proposals Map 9
2. Tewkesbury Borough Local Plan Proposals Map including Ashleworth Inset 4 and Legend
3. Judgment of the Supreme Court in the case of Suffolk Coastal District Council (Appellant) v Hopkins Homes Ltd and another (Respondents) Richborough Estates Partnership LLP and another (Respondents) v Cheshire East Borough Council (Appellant)
4. Recovered Secretary of State Decision in relation to Former Molins Sports and Social Club, Mill Lane, Monks Risborough, Buckinghamshire ref APP/K0425/W/16/3149747
5. Updated list of people notified and list of consultees