
Appeal Decision

Site visit made on 12 December 2017

by Jonathan Tudor BA (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 26 January 2018

Appeal Ref: APP/P1615/W/17/3180350

Hillyfields Nurseries, Tewkesbury Road, Newent GL18 1LG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Mr Galer against Forest of Dean District Council.
 - The application Ref P0520/17/OUT is dated 30 March 2017.
 - The development proposed is outline application for the erection of up to 3 dwellings including demolition of existing greenhouses.
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Decision

1. The appeal is allowed and outline planning permission is granted for the erection of up to 3 dwellings including demolition of existing greenhouses at Hillyfields Nurseries, Tewkesbury Road, Newent GL18 1LG in accordance with the terms of the application, Ref P0520/17/OUT, dated 30 March 2017, subject to the attached schedule of conditions.

Application for costs

2. An application for costs was made by Mr Galer against Forest of Dean District Council. This application is the subject of a separate Decision.

Procedural Matters

3. The application is in outline only with all matters reserved except for access. I have treated the plans as illustrative.
4. The appeal is against the Council's failure to determine the application within the prescribed time. The Council advises that had it been in a position to determine the appeal it would have approved the proposed access. However, it would have refused the proposal because of its effect on the character and appearance of the open countryside and because it would result in the loss of an agricultural/horticultural site.

Main Issues

5. The main issues are:
 - the effect of the proposed development on the character and appearance of the countryside;
 - whether it would be in a suitable location; and,
 - the effect of the proposal on an employment site.

Reasons

Character and appearance

6. The appeal site is located to the rear of a cluster of residential properties on the north side of this part of Tewkesbury Road. Whilst some dwellings front the road, others are set further back up the steep bank of land which rises northwards. The site is currently occupied by a number of commercial glasshouses which are no longer in use and are served by a separate access. To the west Tewkesbury Road terminates at a junction with Bridge Street which leads into the town of Newent, only a few hundred metres away. Therefore whilst the area has a semi-rural character, the appeal site is on the fringes of Newent, albeit beyond the settlement boundary.
7. To the north the site is bounded by a bank and hedge which clearly separate it from the rising agricultural fields beyond. Trees and vegetation mark the eastern boundary with Redmarley Road lying below. On the other side of the road is a field but it is mostly occupied by a complex of larger glasshouses with residential dwellings to the south of them, towards the junction of Redmarley Road and Tewkesbury Road. Further to the north east, the area is covered by large complexes of glasshouses. The western boundary of the site is more open adjoining a field and mature trees next to Lambs Barn Pitch Road (B425).
8. Therefore, the site is next to residential development to the immediate south, flanked by a road to the east and a relatively small field and a road to the west, with a definite banked boundary between it and fields to the north. Moreover, the site is already occupied by built structures in the form of the existing glasshouses and its access runs in a curve to the side of the existing cluster of houses down to Tewkesbury Road. Therefore, although it is defined as open countryside by virtue its location outside the settlement boundary of Newent, I consider that the site has a clearer affinity with the existing cluster of residential development to its immediate south than with the expanse of open fields to the north.
9. My attention has been drawn by the appellant to another appeal lodged by him, relating to a different plot described as Land on the north side of Tewkesbury Road (the TR appeal).¹ In allowing that appeal, the Inspector found that: *'The majority of Tewkesbury Road has a consistent semi-rural appearance, however, the character changes in the vicinity of the appeal site where a small cluster of residential dwellings occupy a bank of land that rises steeply from the north side of the road, close to the junction with Bridge Street.'* The Inspector goes on to characterise it as *'having a domestic, semi-urban appearance.'* Although in the appeal before me the site is about 30 or so metres to the rear of that site, it is also to the north of the same stretch of road and within the immediate vicinity of the same small cluster of houses.
10. The Council suggests that the appeal site is materially different from the TR appeal site, in terms of prominence and the impact that up to three residential dwellings and associated domestic paraphernalia would have on the countryside. However, although the site is in an elevated position, the appellant's 'Context and Parameters' document includes a detailed visual assessment supported by photographs from a variety of potential vantage points. It finds that there are very limited public views of the site. That

¹ APP/P1615/W/16/3145132

includes views from surrounding highways, which are specifically referred to by the Council. Those findings accord with what I saw on my site visit, where views of the site from Tewkesbury Road, for example, are largely obscured by existing dwellings, gardens and the nature of the topography.

11. The site would be seen to the rear by occupiers of some of the properties to the south, but many already look out onto built structures in the form of the glasshouses, which cover much of the site. Overall, the TR appeal site is arguably in a more prominent public position as it is closer to the road, albeit that development involves one dwelling whereas the appeal is for up to three houses.
12. Therefore, whilst there are some differences between the two appeals sites, there are also clear similarities in that they are close to each other and relate to the same cluster of existing houses. Therefore, I give the findings of the Inspector in that appeal, in relation to location and character and appearance, significant weight in my deliberations.
13. Furthermore, the appellant advises that reserved matters have since been approved for the two storey dwelling set back on the slope, which was allowed in the TR appeal. Moreover, the appellant was also given planning permission in September 2016² to replace the existing bungalow at Hillyfields with a larger dwelling. Therefore, if built out, those dwellings would further increase screening of the appeal site from Tewkesbury Road.
14. The Landscape Character Assessment (2002) (LCA) identifies the Botloes Green Area (14b), which includes the appeal site, as within a 'Low Hills and Orchards' landscape. It refers to the Scarr, a kilometre or so to the north of the appeal site, describing it thus: '*This area contains the remnants of the Land Settlement Scheme and extensive areas of glasshouses and poly-tunnels are conspicuous*'. It says that although the landscape was once covered by small holdings, each of which contained a small brick cottage in the Dutch style, when the Land Settlement Scheme ended in the 1980s, many were sold and amalgamated in to larger farming units.
15. As already established, public views of the two discrete glasshouses on the appeal site are very limited and there are far more conspicuous expanses of glasshouses to the north east, which may be the result of the amalgamated units referred to in the LCA. They would be unaffected by the proposed development. In the particular context and setting therefore, the loss of two greenhouses would have a relatively limited effect on the overall landscape character of the area.
16. A planning permission granted by the Council in 2014 at Southend Nurseries³, to the south of Newent and also outside the settlement boundary, is referred to by the appellant. The Council Officer's report relating to that application contains no reference to any relevant LCA and no particular store is placed on the loss of glasshouses in landscape terms. Although it is accepted that proposal was for a larger development, which included affordable housing and abutted the settlement boundary, it was considered under the same development framework, also in the context of a lack of 5-year Housing Land

² 1079/16/FUL

³ P1877/13/OUT

Supply (HLS). Therefore, I give that approval some weight in my considerations.

17. It is suggested by the Council that the appeal proposal would represent an encroachment of residential development into the open countryside. However, as already established, the site is largely enclosed. Given its proximity to the existing cluster of dwellings and the relatively spacious nature of the site, I see no reason why an appropriate design could not be presented at the reserved matters stage which would be both sensitive to the surrounding landscape and the living conditions of neighbouring occupiers. It would also be served by an existing access, which the Council approved of, and appears to be acceptable.
18. Therefore, I conclude that the proposed development would not harm the character and appearance of the countryside. It follows that it would comply with Policy CSP.1 of the Council's Core Strategy (CS)⁴ which, amongst other things, requires that new development takes account of and respects important characteristics of the environment, including landscape. It also complies with similar aims expressed in paragraph 17 and other relevant parts of the National Planning Policy Framework (the Framework).⁵

Suitability of location

19. The appeal site is just to the rear of the TR appeal site, which was described as 120 metres from the defined settlement boundary of Newent. Therefore, it would be contrary to CS Policies CSP.4 and CSP.5, insofar as they say that most changes within towns and villages will be expected to take place within existing settlement boundaries, subject to limited exceptions.
20. It has already been established in the TR appeal however, that the site is within easy walking distance of local shops, services and public transport links, along footways. I recognise that the CS 'Strategic Vision for the Area' aims to protect the environment by guiding the location of development and by requiring high standards of design. However, I have already assessed environmental or landscape harm above design would be dealt with at the reserved matters stage.
21. It is submitted by the Council that the proposal would fail to comply with paragraph 55 of the Framework, as it would not meet any of the special circumstances referred to in it. However, those exceptions apply in relation to the creation of '*new isolated homes in the countryside*'. The proposed dwellings would be located close to a number of other dwellings near a road leading towards Newent, a short distance away. Therefore, whilst it is accepted that they are outside the settlement boundary, they would not form new isolated homes in the countryside. Indeed, the same conclusion is reached by the Inspector in the TR appeal decision at paragraph 13. The consultation response from the Council's Forward Planning Officer also indicates that the location is not isolated with reference to paragraph 55 of the Framework.
22. There is also another cluster of residential development along the north side of Tewkesbury Road at Stardens Farmhouse further to the east, where properties are set back from the road to the rear of a field. The appellant cites a further outline planning permission, granted by the Council in July 2017, for 4

⁴ 23rd February 2012

⁵ Published March 2012

dwellings at Land at Southern Barn, Southend Lane, Newent.⁶ That site was approximately 150 metres to the southeast of the settlement boundary, although it was next to an allocated site for development. That decision was also in the context of a lack of a 5-year HLS and conflict with aspects of the development plan was recognised in the relevant Council Officer's report.

23. In that application, the sustainability of its location close to one of the main settlements in the District, with a full range of shops and facilities accessible by various modes of more sustainable transport, was recognised as an important factor in the balance. Therefore, although I do not have comprehensive details, there appear to be a number of similarities between that recent scheme and the appeal proposal before me. Consequently, I give it weight in relation to my consideration of the acceptability of development outside a settlement boundary in particular circumstances.
24. Therefore, whilst there is conflict with Policies CSP.4, CSP.5 and CSP.16 of the CS, I conclude that the proposed development would be in a suitable location as it is not isolated in terms of physical proximity to other dwellings and is also within easy access of a range of services and facilities at Newent.

Employment site

25. Policy CSP.7 of the CS advises that: '*Land presently used for employment will be expected to remain so, unless allocated for another purpose*'. Whilst the site is not allocated for housing in the emerging Allocations Plan, the policy does go on to say that: '*Where a site is underused and unsuitable (by way of environment or location) for any employment generating use, (including service based uses), then a mixed use may be appropriate (eg employment and housing) and failing that an alternative non employment use*'. Therefore, there is some scope in the application of the policy dependent on the site.
26. The appellant advises that the site is currently redundant and obsolete. It is not clear when its previous horticultural use ended, although it is referred to as recent. According to the appellant the unit was operated for a long period as a commercial nursery by a previous owner but became vacant on their retirement. It was used in conjunction with the living accommodation at Hillyfields Bungalow, although representations from local residents appear to indicate that it may have been let separately in more recent years.
27. Much larger horticultural operations exist nearby which would enjoy greater economies of scale and, according to the appellant, employ mainly seasonal workers. Given the small scale of the appeal site, it appears unlikely that it would make a significant contribution to employment, or indeed that it has done in the past. Its proximity to residential premises and the nature of the access would not obviously lend themselves to an intensive commercial use. Some neighbouring residents have raised concerns about resumed use of the driveway in connection with houses. However, if commercial use resumed more intensively as a standalone unit, there could also be negative consequences for the living conditions of nearby occupiers with disturbance from large vehicles.
28. The planning permission relating to Southend Nurseries, referred to above, is also relevant to this aspect. There was an active horticultural unit in that case,

⁶ P5092/17/OUT

which included a sizeable area of glasshouses and poly-tunnels, and related employment. It was operated as part of a larger business sited elsewhere. Despite an acknowledged conflict with Policy CSP.7 of the CS, the loss of that employment site, which was in current use, to residential development was accepted by the Council, albeit that involved a larger scheme 25 houses with 10 to be affordable. There is no mention in the relevant Council Officer's report of a marketing exercise for continued agricultural/horticultural use having been carried out, and Policy CSP.7 does not specifically require such marketing. The appellant also advises that no such information was requested during the course of the application process in relation this appeal proposal.

29. I conclude that whilst there would be a loss of land that was previously in employment use, given the particulars of this site, the impact on future employment opportunities in the area would not be significant. Therefore, whilst there would be some conflict with Policy CSP.7 of the CS, any harm would be limited.

Other Matters

30. In addition to the matters already dealt with local residents have raised some other concerns. I have considered whether the grant of planning permission would set a precedent for other similar developments. However, all decisions are based on the particular characteristics of a site and are judged on their own merits. Whilst there may be some similar sites, it would be still be possible for distinctions to be drawn if a proposal was found to cause significant harm.
31. Concerns about the effect on the access road have been expressed. Reference has also been made to possible overlooking. However, this is an existing access and my understanding is that it could be used by commercial and domestic vehicles associated with Hillyfields already. The Council have not expressed concern about its use. With regard to the construction of houses the issue of privacy would be a factor at the reserved matters stage when design, layout and landscaping would be considered. Given the location of the site and the separation distances from other properties, it should be possible for such adverse effects to be avoided.
32. The effect on views has been referred to but the site is already occupied by relatively large glasshouses. In any event, the planning system does not normally protect private views unless the proximity or scale of new buildings is such that it would prove overbearing or oppressive. Concerns have been raised about the loss of agricultural land but I understand that it is not classified as prime agricultural land. Moreover the site is not substantial in agricultural terms.
33. Although the issue of impact on property values has been referred to, it is a well-founded principle that the planning system is more concerned with the wider public interest than protecting private interests such as land values. In any event, the fallback position would be for the existing site to be operated on a commercial basis which could have an equal effect.
34. The Council's Conservation Advisor has indicated that there are long distance views towards the Newent Conservation Area and that a listed building is located nearby on the corner of Redmarley Road. The Conservation Advisor is satisfied that the proposal would be unlikely to cause harm to the setting and

significance of those designated heritage assets. I see no reason to disagree with that conclusion.

35. I have taken account of the various appeal decisions and cases referred to by the parties, aside from those specifically cited above, in reaching my decision. I have also considered the self-build option discussed by the parties, but have not given it weight in my decision. It would be unnecessary and too restrictive to impose such a requirement it by way of condition.
36. The Government's White Paper 'Fixing our broken housing market' does express support for small sites and recognises the opportunities that they create for custom builders and smaller developers. However, consultation has been taking place and final proposals are yet to be published. Changes to the Framework would also be required. Therefore, at present, the proposals are not Government policy and do not attract weight in the planning balance.

Conditions

37. The Council has suggested conditions which I have considered, making minor amendments if necessary to ensure compliance with the tests contained in the Planning Practice Guidance. Conditions regarding reserved matters and time limits are required by statute. A condition relating to proposed site and floor levels is appropriate to enable proper consideration of design at the reserved matters stage and given the sloping nature of the site. It is necessary for there to be a condition relating to materials to protect the character and appearance of the countryside. The appellant has questioned the requirement for samples of materials to be provided, but given its rural location and that it would also be seen from neighbouring properties, I do not consider that requirement to be unreasonable or unnecessary.
38. It is appropriate for there to be a condition concerning foul and surface water drainage to ensure that full details are presented at the reserved matters stage and that suitable arrangements are implemented prior to the occupation of any dwellings. Given that the proposal is for three dwellings it is appropriate to ensure that sufficient details of car parking and manoeuvring facilities are provided at the reserved matters stage to ensure sufficient off-street parking and road safety.
39. A condition relating to biodiversity enhancement is necessary to ensure a suitable scheme. Given the extensive correspondence between the appellant and the Council's Biodiversity and Countryside Officer, including requests for information subsequent to the submission of the Ecological Survey, it is important to ensure that an appropriate scheme is fully agreed.
40. It is necessary for there to be a condition requiring a Construction Method Statement to ensure that effects on the living conditions of neighbouring residents are limited and that highway safety is preserved.

Planning Balance and Conclusion

41. The Council acknowledges that it cannot currently demonstrate a 5-year HLS. Therefore, by virtue of paragraph 49 of the Framework, relevant policies for the supply of housing are considered out-of-date and the fourth bullet point of paragraph 14 of the Framework applies. The important issue is not whether or not particular policies should be categorised as 'policies for the supply of housing' but whether the result is a 5-year HLS. If there is no 5-year HLS, it

does not matter if that is because of policies which specifically deal with housing provision or because of other restrictive policies, it is the shortfall itself which triggers the fourth bullet point of paragraph 14. That advises that planning permission should be granted dependent on two tests detailed in the first and second limbs of the bullet point.

42. The second limb test advises that permission should be granted unless specific policies in the Framework indicate development should be restricted. It is accepted that no such policies apply to the proposed development. The first limb test advises that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
43. In environmental terms, I have already concluded that the development would not harm the character and appearance of the countryside, subject to appropriate consideration at the reserved matters stage. Moreover, the location would enable use of sustainable forms of transport rather than the private motor car, which would be in accordance with the Framework's promotion of sustainable transport and make some contribution to limiting pollution and mitigating climate change.
44. Economically, there would be a benefit in the form of employment and the purchase of building materials during the construction phase and from the contribution of future occupiers to the local economy. Whilst there would be a loss of land formerly in horticultural use capable of providing some employment, I have concluded that the adverse effect would not be significant. Harmful effects associated with a resumption of unrestricted commercial use of the site in close proximity to residential dwellings are also a factor to consider.
45. Socially, future occupiers would help to support local services. There would also be a contribution to the supply of housing, in a current context of a lack of a 5-year HLS. Although three houses would not form a substantial contribution, it would still be of value. I note that the Inspector in the TR appeal took a similar view in relation to a proposal for one dwelling and that the Council accepted that four market dwellings would contribute to an under-supply of housing, in connection with the Southern's Barn permission referred to above.
46. There would be some conflict with development plan policies, particularly CS policies CSP.4, CSP.5 and CSP.7 but I have not found the conflict to be significant in terms of actual harm. I also recognise the continued progress of the Council's Allocations Plan Submission Draft, August 2015 (AP), although I note that the Inspector still appeared to have some concerns about whether the planned deliverable supply was sufficiently robust as recently as September 2017. Nevertheless, I note that the Inspector's recommendations were accepted with further Main Modifications subject to consultation. According to the Council, the examining Inspector appears satisfied with the fundamentals of the plan but the Inspector's final report has yet to be published and the AP is yet to be adopted. However, when matters are finalised the Council will have a 5-year HLS, although that is not the case at present. I have taken those factors into account in the balance.
47. The Council refer to Policy AP1 of the emerging AP. Essentially, policy AP1 says that, in assessing planning applications the primary consideration will be

whether or not the development proposed is sustainable with the overall aim of improving the economic, social and environmental conditions of the area. On the basis of the planning balance carried out above, I do not find specific conflict with the Policy AP1 or the Framework, which is referred to within it.

48. Therefore, although I have identified conflict with aspects of development plan policies, I consider that the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits, when assessed against of the Framework as a whole. Therefore, the presumption in favour of sustainable development weighs in favour of the proposal.
49. Overall, I consider that to be a material consideration of sufficient weight to justifying a decision otherwise than in accordance with the development plan, in the particular circumstances of this appeal. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

Jonathan Tudor

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development for which permission is hereby granted shall not be commenced before detailed plans showing the layout, scale, appearance and landscaping of the site (referred to as "the reserved matters") have been submitted to and approved in writing by the local planning authority.
- 2) Application for the approval of the reserved matters shall be made not later than the expiration of three years beginning with the date of this permission.
- 3) The development hereby permitted shall be commenced not later than the expiration of two years from the final approval of the reserved matters or, in the case of approval on different dates, the final approval of the last such matter to be approved.
- 4) The details to be submitted under Condition (1) shall include existing and proposed site and floor levels and sections through the site.
- 5) The details submitted under Condition (1) shall include full details and samples of all external materials for the development of the dwellings hereby permitted. Thereafter the approved details shall be fully implemented and be maintained as approved
- 6) The details submitted under Condition (1) shall include full surface and foul water drainage proposals, including connection to any existing facility and the disposal of surface water from the driveway and parking/turning areas within the confines of the site, and thereafter the approved details shall be fully implemented prior to the dwellings being occupied.
- 7) The details submitted under Condition (1) shall include provision for properly consolidated and surfaced car parking and manoeuvring facilities. Such facilities

shall be provided prior to each dwelling served by them being occupied and shall be kept permanently available for such use with the car parking spaces retained for parking only and the manoeuvring facilities for manoeuvring.

- 8) Prior to construction a scheme for biodiversity enhancement, such as incorporation of permanent roost/nest features for bats and birds, shall be agreed in writing with the local planning authority. The scheme shall be implemented prior to the occupation of the dwellings, retained and maintained for their designed purpose in accordance with the approved scheme.
- 9) Prior to any works, including demolition of the existing glasshouses, a Construction Method Statement shall be submitted to and approved in writing by the local planning authority. The Statement shall:
 - i. Include full details of the demolition, storage of and removal of the Glasshouses;
 - ii. Include details of a construction vehicle routing plan;
 - iii. Provide for the parking of vehicles of site operatives and visitors;
 - iv. Provide for the loading and unloading of plant and materials;
 - v. Provide for the storage of plant and materials used in the construction of the development;
 - vi. Provide for wheel washing facilities;
 - vii. Specify the intended hours of construction;
 - viii. Provide details of dust suppression methods to be used;
 - ix. Provide details of how construction noise will be controlled.
 - xi. Demonstrate how the location and use of heavy machinery, plant or material in areas where infiltration is proposed have been taken into consideration.

The approved works shall be carried out in accordance with the approved Construction Method Statement and it shall be adhered to for the duration of the demolition and construction period.

END OF SCHEDULE