



Appeal Decision

Site visit made on 18 September 2018

by Paul Singleton BSc (Hons) MA MRTPI

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

Decision date: 6 November 2018

Appeal Ref: APP/G1630/W/17/3181987

Colchesters Farm, The Village, Ashleworth, Gloucester GL19 4JG

- 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 Paul Finch against the decision of Tewkesbury Borough Council.
 - The application Ref 16/01465/FUL, dated 24 November 2016, was refused by notice dated 16 February 2017.
 - The development proposed is erection of one self-build cottage together with a garage and associated vehicular access and driveway.
 - This decision supersedes that issued on 14 November 2017. That decision on the appeal was quashed by order of the High Court.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The decision on the appeal by Inspector Murray, issued on 14 November 2017, was quashed by order of the High Court. The appeal now falls to be considered anew although the findings of Inspector Murray are material considerations to which I should have regard. The parties were advised that the appeal would be re-determined on the basis of the exchange of written representations dealing with any changes in circumstances since November 2017.
3. Following the submission of their updated statements the parties were invited to submit written comments on what bearing, if any, the policies in the revised National Planning Policy Framework (Framework), published on 24 July 2018, have on the issues in the appeal. In its final comments, which were submitted in accordance with the relevant deadline, the Council introduced some new material that had not been included in its updated Statement of Case dated 19 July 2018. In the interests of fairness, the appellant has been given the opportunity to respond to that new material. I have taken these various written submissions into account in my consideration of the appeal.
4. Since the application was refused, the Council has adopted the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS) and this now forms part of the development plan for the area. The JCS has superseded some policies of the Tewkesbury Borough Local Plan (2006) (BLP) which were cited in Council's decision notice and I have had regard only to the replacement policies where this has occurred.

5. The appeal form indicates that the description of development was amended from that in the original application to refer the creation of a new vehicular access rather than the alteration of an existing access. This is a more accurate description of the development and I have adopted this in the appeal decision.

Main Issues

6. The main issues are:

- (a) Whether the site is a suitable location for the proposed development having regard to the provisions of the development plan; and
- (b) The effect on the character and appearance of the site and its surroundings having regard to its inclusion within a designated Landscape Protection Zone.

Reasons

Suitability of location

7. The site is not an isolated location for the purposes of paragraph 79 of the Framework and, in terms of access to amenities and services within Ashleworth and to local bus stops, is agreed to be in a reasonably accessible location. Ashleworth is not, however, one of the Rural Service Centres (RSCs) or Service Villages (SVs) which JCS Policy SP2 identifies as suitable to accommodate further housing development.
8. The appellant seeks to question the scoring system used in the evidence base for the JCS to rank villages on the basis of the services and facilities within them. I agree with Inspector Murray that it is not open to me, in determining the appeal, to reassess that evidence base. Any changes to the identified village hierarchy should properly be considered in the replacement Tewkesbury Borough Local Plan which the Council is preparing.
9. Part 3 of JCS Policy SD10 states that residential development will be permitted on allocated sites and previously developed land in the built-up areas of Tewkesbury and the RSCs and SVs. As Ashleworth is not a RSC or SV this part of the policy does not apply. I do not accept the appellant's argument that part of the site should be classed as previously developed land. The site forms part of a larger area of pasture and there is clear evidence of its recent use for this purpose. The presence of small structures for keeping poultry on part of the site is not sufficient to alter its use to residential or to one that is ancillary to residential use. In my assessment, the site mainly comprises pasture land and should be treated as a greenfield site currently in agricultural use.
10. I agree with the ruling of the Deputy Judge in the Chargrove Paddock case¹ that part 4 of Policy SD10 is not restricted to RSCs and SVs and is applicable to any village within the Borough if the other requirements of that part are met. The proposal accordingly falls to be considered under Part 4 of the policy. This states that housing development on other sites will only be permitted in the limited range of circumstances set out in sub-paragraphs i. to iv. The proposal does not meet the criteria in clauses i., iii, or iv. and the main consideration is whether or not it complies with clause ii. This states that housing development will only be permitted where: "*It is infilling within the existing built up areas*

¹ Chargrove Paddock Limited & SoSHCLG & Tewkesbury Borough Council (2018) EWHC 2474 (Admin)

of...towns and villages except where otherwise restricted by policies within District Plans".

11. Unlike BLP Policy HOU4 which it has replaced, Policy SD10 makes no reference to Residential Development Boundaries (RDB) as these have not been saved on the adoption of the JCS. Hence the site's location abutting but outside of the previously defined RDB for Ashleworth is irrelevant when considering the proposal's compliance with this part of the policy. The key question is whether it would comprise infilling within the existing built-up area. Paragraph 4.10.5 of the JCS advises that 'infill development' means the development of an under-developed plot well related to the existing built development. In its current use and condition the site is undeveloped rather than under-developed and it is uncertain that the proposal would comply with Part 4 on this ground. It also fails to meet the other requirements of this part of the policy.
12. Based on my observations on my site visit I consider that the existing built-up area of Ashleworth village includes the properties at Laynes Cottages and those within the St Andrews estate but does not extend beyond their northern boundaries. The house and buildings at Colchesters Farm are physically and visually separated from the built-up area of the village by a significant expanse of open land comprising the large garden to the farmhouse and the appeal site. There are no buildings fronting this section of the lane and the roadside boundary is defined by well-established hedges and trees. On the opposite side the St Andrews estate is physically and visually separated from the buildings within Harpers Farm by a substantial block of mature trees.
13. Given this context, I do not consider that the proposal can reasonably be regarded as constituting infilling within the existing built-up area of the village. Rather than comprising the development of an under-developed plot within the built-up area the proposal would represent an extension of the built-up area into currently open land. As the proposal does not meet any of the other exceptions under Policy SD10 it conflicts with that policy and with JCS Policy SP2 which sets out the Council's strategic policy on the distribution of development in the borough.
14. Reference has been made to the decisions of other Planning Inspectors in recent appeals in the Borough.² Whilst these Inspectors have reached different conclusions on whether or not the appeal sites in those cases were within the built-up area of the relevant settlements the approaches that they have taken to this question supports my view that this is a planning judgement to be made in the specific circumstances of each case. That is the approach that I have taken in relation to the current appeal proposal and site.

Character and appearance

15. I note the Council's concerns with regard to the design and materials proposed for the new dwelling but I agree with Inspector Murray that these could be addressed by means of a plans condition if the proposal was acceptable in all other respects.
16. The local area in which the site is located is designated as a Landscape Protection Zone (LPZ) under saved Policy LND3 of the BLP. This policy remains

² APP/G1630/W/17/3184561 re land at Post Office Lane, Cleeve Hill dated 6 February 2018 & APP/G1630/W/17/3180263 re The Timbryard in Highnam dated 13 April 2018.

extant following the adoption of the JCS. The Framework does not refer directly to the adoption of landscape protection zones but nonetheless is supportive of the protection of landscape character. Full weight can, accordingly, be afforded to this policy.

17. The site forms part of a larger field and the frontage hedge and curvature of Nup End Lane serve to limit views from the road into and across the site. However, from the Public Right of Way (PROW), which extends along the northern boundary and beyond the limits of the appeal site, the open nature of the site can be fully appreciated. In these views, the site reads as part of a much larger area of gently undulating pasture extending to higher ground to the east and south. In my assessment the site makes a positive contribution to the surrounding landscape that provides the rural setting of the village.
18. Due to the absence of built development and the presence of a mature hedge to its roadside frontage the appeal site forms part of an area of transition between the built up area of the village and the open countryside to the north and east. This also includes the frontages to Colchesters Farmhouse and its garden and to the wooded area on the opposite side of the lane. In combination, these frontages give this section of the lane a pleasant, semi-rural character. The appeal proposal would retain most of the frontage hedge but the proposed dwelling and its garage would project above the height of the hedge by a considerable degree.
19. When approaching from the south, the only built development currently seen is a glimpsed view of the chimney and part of the roof to Colchesters Farmhouse but this is heavily filtered by the mature trees to its frontage. In this view, the gable and roof of the proposed garage would appear as a dominant and intrusive element. When approaching from the north, both the proposed house and garage would be seen in what is currently an open area of land in front of Laynes Cottages. The house, garage and the domestic paraphernalia within its curtilage would have a negative impact on views from the PROW and on the experience of users of this route. As a result, the proposal would detract from the semi-rural character of this part of the lane and reduce the extent to which it serves as an area of transition between the built up area of the village and the open countryside.
20. In line with the approach taken by the Inspector in the Highnam appeal referred to in paragraph 14 above, and by Inspector Murray in the quashed decision on the current appeal, the effect of the proposal on the landscape and character of the appeal site and its surroundings is a matter of planning judgment.
21. On this matter my judgement is not fully in accord with that of Inspector Murray in that I find that the proposal would cause material harm both to the character and appearance of this part of the village and to its rural landscape setting. Given the designation of the surrounding landscape as a LPZ, significant weight should be attached to that harm. The proposal conflicts with JCS Policy SD6, which seeks that development proposals should have regard to local character and avoid detrimental effects on features which make a significant contribution to the character and setting of the settlement, and with saved BLP Policy LND3 which seeks to protect the character of the LPZ.

Other Matters

22. The latest Housing Land Supply Statement (July 2018) shows that the Council is able to demonstrate a forward housing land supply in excess of the minimum 5 year requirement set out in paragraph 67 of the Framework, even if draft allocations in the proposed replacement BLP are not included. No evidence has been submitted which disputes that supply position and there are, therefore, no grounds for treating the relevant development plan policies as being out of date for this reason. Similarly, although I note the comments made by the appellant, I see no grounds for judging the relevant policies in the recently adopted JCS or saved Policy LND3 of the BLP inconsistent with the Framework. Accordingly, I attach full weight to the conflict with those policies.
23. The proposal has been promoted as a 'self-build' development. JCS Policy SD11 states that housing development will be required to provide an appropriate mix of dwellings and that self-build housing will be encouraged as part of an appropriate mix. The policy does not set out any specific criteria against which a proposal for self-building housing can be assessed and paragraph 4.11.10 of the JCS indicates that more detailed policies will be provided in district plans to support the implementation of projects for self-build housing. There is no more detailed policy in the JCS and self-build is not identified as one of the exceptions permitted under JCS Policy SD10. Hence, although the JCS indicates general support for self-building housing, it does not do so in circumstances where the proposed development would conflict with Policy SD10.
24. Paragraph 61 of the Framework advises that the size, type and tenure of housing needed for different groups (including people wishing to commission or build their own homes) should be assessed and reflected in planning policies and this is a matter which could be considered in the replacement Tewkesbury Borough Local Plan if the Council has identified a meaningful demand for such provision. At present, however, the entries on the register³ indicate a very low level of demand for such development opportunities.
25. I have no evidence that the Council is failing in its duties under the Self Build and Custom Housebuilding Act 2015 to maintain a register of those wishing to build their own homes or to grant suitable development permissions to meet the identified demand. Neither has the appellant provided evidence that he has registered his interest in a self-build opportunity. As the site would be developed for his own use a grant of planning permission would not assist in meeting the demand for self-build plots from people who have added their names to the register. Very little weight can, therefore, be given to this element of the appeal proposal. This consideration does not justify a grant of planning permission contrary to the provisions of the development plan.
26. The proposal would make a small contribution to the supply of housing in this part of the Borough and bring economic benefits in terms of the investment and employment generated through the construction works. However, as the proposal is for a single dwelling, these benefits would be very modest.
27. The appellant has referred to other residential development permitted by the Council which he says is similar in nature to the appeal proposal. I have

³ Public Register which the Local Authority is required to maintain under the Self Build and Custom Housebuilding Act 2015.

insufficient information to form a conclusive view as to the degree of similarity or of the circumstances in which those permissions have been granted. Hence, I do not consider that they should be taken as any form of precedent for the determination of the appeal

The Planning Balance

28. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that applications and appeals should be determined in accordance with the development plan unless material considerations indicate otherwise. The appeal proposal conflicts with JCS Policies SD6, SD10 and SP2 and with saved BLP Policy LND3. In light of this conflict, and in the absence of any positive policy support for the proposal, I conclude that it conflicts with the development plan as a whole.
29. Whilst the proposal would bring modest economic and social benefits these would be insufficient to outweigh the harm to the character and appearance of the site and the surrounding landscape or the development plan conflict that I have identified. There are no other material considerations to justify a grant of planning permission contrary to the provisions of the development plan.

Conclusion

30. For the reasons set out above and having regard to all matters raised I conclude that the appeal should fail.

Paul Singleton

INSPECTOR