



Appeal Decision

Site visit made on 25 June 2019

by Stuart Willis BA Hons MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 July 2019

Appeal Ref: APP/P1615/W/19/3225944

Land adjoining The Laurels, Main Road, Huntley, Gloucester GL19 3EA

- 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 Mrs M Bailey against the decision of Forest of Dean District Council.
 - The application Ref P1709/17/OUT, dated 22 October 2017, was refused by notice dated 4 October 2018.
 - The development proposed is residential redevelopment of up to five custom-build dwellings. (demolition of existing commercial buildings)
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Outline planning permission is sought with all matters reserved. I have had regard to the indicative details provided but have treated them as illustrative. I have determined the appeal on this basis.

Application for costs

3. An application for costs was made by Mrs M Bailey against Forest of Dean District Council. This application is the subject of a separate Decision.

Main Issues

4. The main issues of the appeal are;
 - The effect of the proposal on the character and appearance of the area;
 - The effect of the proposal on ecology; and
 - Whether the proposed development would provide a suitable site for housing, having regard to local and national planning policies, and proximity to services and reliance on motor vehicles.

Reasons

Character and Appearance

5. The site is not part of a designated landscape and the surrounding area contains elements that are not characteristic of the Severn Vale Landscape Character Area. There is development adjacent to the site and it is not open

- agricultural land. However, from my observations, the site appears as one of several occasional breaks in development in the low density ribbon development along this side of the road. Much of the site is well screened from public views and to some degree from the adjacent properties. This is due to the extensive mature vegetation at the site and the existing built form being set back and down from the road. It contributes to the openness of the area and make it distinct from the more continuous built form in the main part of the village.
6. I acknowledge that the proposal is in outline form with all matters reserved and that there was no objection from the Biodiversity and Countryside Officer. Nevertheless, the illustrative details show the scheme would introduce additional buildings and other built form into a largely undeveloped area. Moreover, there would be a need for driveways, parking and domestic paraphernalia. This would significantly alter its character and appearance given the relatively small area of developed land on the site at present. It would inevitably give the site a residential appearance and be inherently harmful.
 7. The plans indicate that development would be considerably further back in the site than at present with properties to the rear of others. This would be incongruous with the linear development in the row. From the information before me it is unclear how else the site could be arranged, other than as shown, to prevent this being the case.
 8. While new planting and management of site boundaries are proposed, the illustrative layout indicates that areas of existing landscaping would need to be removed. Any new planting would take time to mature and therefore not effectively screen or filter views of the site for some time. Landscape conditions can be appropriate in certain instances. However, they should not be used to try to hide development which is unacceptable. From the information before me, the greater built form and discordant layout would still be visible from the access and adjacent properties.
 9. Therefore, the proposal would result in unacceptable harm to the character and appearance of the area. It would be contrary to Policies CSP1, CSP4 and CSP5 of the Forest of Dean District Council Core Strategy (CS) and Policies AP1 and AP4 of the Forest of Dean District Council Allocations Plan 2006-2026 (AP). These, in part, indicate small sites should be lower density, respect and improve the characteristics of the environment, and seek to protect the environmental conditions of an area and take into account local character.
 10. It would also fail to accord with the environmental objective of the Framework and where it requires development to add to the overall quality of the area and be sympathetic to local character.

Ecology

11. The Natural Environment and Rural Communities Act 2006 requires that "Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity." Damage or destruction of a breeding site would be an offence under the Conservation of Habitats and Species Regulations 2010 (the 'Regulations') unless a Natural England (NE) European Protected Species (EPS) licence is issued prior to commencement of works or confirmation is received from NE that the development would not require such a licence.

12. The Habitats Directive requires that member states establish a system of strict protection for EPS, setting out the offences that may be committed. Derogations from this strict protection are only allowed in certain limited circumstances. When determining whether or not to grant a licence, Natural England must be satisfied that the following three tests have been met:
- (a) Preserving public health or public safety or other imperative reasons of overriding public interest;
 - (b) There is no satisfactory alternative; and
 - (c) The action will not be detrimental to maintaining the population of the species concerned at a favourable conservation status in its natural range.
13. In the absence of an application for an EPS Licence, I am required by Regulation 9(3) of the Regulations to have regard to the requirements of the Habitats Directive in the determination of this appeal and consider whether there would be a reasonable prospect of a licence being granted by applying the three tests.
14. In so far as the first test is concerned, the public interest generated by the proposal can be of a social, environmental or economic interest. The proposal would lead to certain economic and social benefits. Nonetheless, having regard to development plan policies, the proposal would be contrary to environmental policies designed to protect the character and appearance of the area. As such, there are outstanding environmental concerns and the proposed development would not be in the public interest. Therefore, it would fail the first test.
15. In the absence of any clear evidence in relation to alternatives to the proposal, I cannot be satisfied that alternative solutions that would result in the protection of the existing bat habitat could not be achieved. The proposed development would thus fail the second test.
16. With regards to the third test, the appellant has undertaken an ecological assessment. This found evidence of a day roost and occasional night/feeding roost for Lesser Horseshoe Bats at the site. The roost was considered to be of medium-low conservation significance and a bat mitigation strategy included the creation of a bat loft in a garage. I would concur with the Council in relation to the third test that the proposed development could be implemented in such a way as to ensure no harm would occur to the protected species.
17. However, the appeal proposal fails to meet the other derogation tests and would have an adverse effect on ecology. It would therefore conflict with Policies AP1 and AP7 of the AP and Policies CSP.1 and CSP.2 of the CS. These, amongst other things, seek to protect the environmental condition of the area and to prevent harm to protected species and their habitats. The proposal would also fail to accord with the Framework where it seeks to minimise impacts on biodiversity.

Location of Development

18. The site is located outside of the defined settlement of Huntley and therefore in the open countryside. Huntley is defined as a service village in the CS and this indicates development is likely, but not limited to, small scale development, such as single plots or pairs.

19. CSP.16 of the CS states that proposals will need to take into account the accessibility of the location and availability of public transport. The defined settlement limit is said to be a key determinant. Nevertheless, outside of villages with a settlement boundary some additional dwellings are expected. Policy CSP.5 gives priority to previously developed land. Policy CSP.4 seeks to restrict most, but not all changes to towns and villages to within the existing settlement boundaries and gives examples of what exceptions there may be to this.
20. From my observations on site, the site is well related to the settlement and I see no reason to disagree with the Council that it is very near the village. While there is no planning permission or certificate of lawfulness in place to provide clarity of the use of the site, there are buildings located on it and a hardstanding to the front. Given the characteristics of the site, and what I saw during my site visit, there is no compelling evidence to lead me to a different finding from the Inspector in APP/P1615/A/98/1012378/P5 who considered the site not to be greenfield. Nonetheless, this does not automatically result in planning permission being granted.
21. The proposal would seek to develop a greater amount of the site, making a more efficient use of it and while of a higher density than the adjacent plots would not be of a scale that would be out of proportion with the settlement. While being for market housing, the main parties do not dispute that there is an identified demand in the area for custom-build properties. This would represent a social benefit. No clear evidence has been provided that this need is being met elsewhere. There is positive support for the provision of such units in national policy which also seeks to significantly boost the supply of homes.
22. The Framework recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. While there is not an extensive range of services and facilities in the village, there is a public house and village hall. Moreover, while not large, there is a shop at the petrol station close to the site that has the capacity to deal with basic shopping needs. That some facilities are in the countryside does not mean they are not close to or easily accessible from the site. While the school and a further petrol station with shop are to the other side of the village, the site is reasonably well related to the village.
23. Although the site is located within a 50mph speed limit area, this reduces to 30mph towards the main part of the village. There are surfaced footways along the road which are in part lit, and the surrounding routes are relatively flat with many of the facilities and nearby bus stops within a reasonable walking distance. The Council consider the bus services to be regular and frequent and there is no clear evidence to the contrary. As such, there is potential for public transport to be used to access larger settlements with a wider range of services and facilities.
24. Despite a lack of dedicated cycle facilities, there has been no clear evidence presented to indicate the route would be unsuitable given much of the village is subject to the lower speed limit.
25. There would be support to local services from the future spend of the occupants of the properties. This would help enhance or maintain the vitality of rural communities. Further economic benefits would arise during the construction period. While there may not be a full range of services in Huntley

itself, and some reliance on the private car, as a result of the genuine choice of transport modes, the development could also support services in villages nearby.

26. Therefore, I find that the site would be a suitable location for the proposed development, having regard to local and national planning policies and its proximity to services and reliance on private motor vehicles. It would comply with aspects of CS policies CSP.1, CSP.4, CSP.16, CSP.5 and AP1 of the AP insofar as they together require development to take account of the scale, function and level of services accessible from the intended location and promote sustainable communities in rural areas. Furthermore, it would be an efficient use of resources and improve social and economic conditions of the area.
27. Moreover, it would accord with the Framework being an efficient use of underutilised land to meet identified needs, being accessible to a genuine choice of modes of transport and that it would help maintain the vitality of rural communities.

Other Matters

28. Were the appeal to be allowed, it would have been necessary for planning permission to incorporate some means of ensuring that the custom-build properties were constructed in this manner. I have not been persuaded that this could be covered by condition and there would be no mechanism to secure the delivery of the properties as self-build units.
29. There would be benefits from the proposal which I have identified above. The Council has not included refusal reasons in relation to highway safety, flood risk, land contamination, or living conditions of nearby residents. Nonetheless, the absence of harm in regard to these matters is a neutral factor. Even if I were to conclude there is a shortfall in the five-year housing land supply as suggested by the appellant, the adverse impacts of granting permission would significantly and demonstrably outweigh the benefits of the scheme.
30. I appreciate that the appellant sought to resolve matters with the Council and note reference to the conduct of the Council during the application and appeal process. Nevertheless, I have assessed the proposal on its planning merits.
31. My attention has been drawn to a number of appeals by the appellant¹. While there are similarities between these and the scheme before me, I have not been provided with full details of the proposals. There are also elements that make each materially different. This includes the location, nature and scale of development and the main issues. In any event each appeal is determined on its own merits.

Conclusion

32. Therefore, for the above reasons the appeal is dismissed.

Stuart Willis

INSPECTOR

¹ APP/P1615/A/13/2205065, APP/N1730/W/17/3185513, APP/P1615/W/17/3180350, APP/P1615/W/18/3194151, APP/P1615/W/18/3208068, APP/P1615/A/06/2015198