



Appeal Decisions

Hearing Held on 12 February 2020

Site visit made on 12 February 2020

by Colin Cresswell BSc (Hons) MA MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 March 2020

Appeal A - Ref: APP/P0119/W/19/3239486

Almondsbury Squash Club, Oaklands Drive, Almondsbury BS32 4AB

- 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 BS32 Ltd against the decision of South Gloucestershire Council.
 - The application Ref P19/2287/F, dated 26 February 2019, was refused by notice dated 17 September 2019.
 - The development proposed is erection of 2 dwellings.
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Appeal B - Ref: APP/P0119/W/19/3239509

Almondsbury Squash Club, Oaklands Drive, Almondsbury BS32 4AB

- 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 BS32 Ltd against the decision of South Gloucestershire Council.
 - The application Ref P19/2266/F, dated 26 February 2019, was refused by notice dated 17 September 2019.
 - The development proposed is erection of 2 dwellings.
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Decisions

1. Appeal A is dismissed.
2. Appeal B is dismissed.

Procedural Matter

3. I refer to the different cases as Appeal A and Appeal B. I have dealt with each appeal on its individual merits, but to avoid duplication both proposals are considered together in this decision. Although there are two appeals, I have used singular terms in places for ease of reading.

Background

4. The appeals concern two adjoining sites on the edge of Almondsbury. Both are undeveloped and are situated in the Green Belt. It is proposed to construct 2 dwellings on each site (amounting to 4 dwellings in total). The sites are within the settlement boundary of Almondsbury for the purposes of the PSP¹.
5. A planning application² for 16 dwellings on a larger area of land (incorporating both appeal sites as well as an adjoining site containing disused buildings) was

¹ South Gloucestershire Local Plan, Policies Sites and Places Plan, November 2017.

² Council Reference: PT16/4730/F

refused by the Council in January 2017. Reasons for refusal included conflict with Green Belt Policy, character and appearance issues, harm to the setting of Pear Tree Cottage (a Grade II Listed building) and the absence of contributions towards public open space and affordable housing.

6. Following this refusal, the scheme was reduced in size and the undeveloped land covered by the current appeal sites was excluded. Instead, 10 dwellings were proposed on the area of land containing disused buildings. The Council considered that the new dwellings would be similar in scale to the development already present on the site and outline planning permission³ was granted in January 2018. I saw on my site visit that the dwellings are now built.
7. The 4 dwellings proposed in the current appeals would introduce housing on undeveloped areas of land which were included in the refused application for 16 dwellings but later excluded from the approved application for 10 dwellings. The Council's reasons for refusal in the current appeals are broadly similar to those in the earlier proposal for 16 dwellings.
8. A Statement of Common Ground was submitted prior to the hearing which addresses some of the concerns raised by the Council. It was subsequently confirmed at the hearing that agreement has now been reached on arboricultural impacts, ecological mitigation and the appropriate level of contributions towards public open space. The open space contribution is secured by unilateral undertakings and there is no dispute between the parties that the relevant tests would be met (necessary, directly related to the development and fairly related in scale and kind).

Main Issues

9. The main issues in this case are therefore:
 - whether the proposal is inappropriate development for the purposes of the Framework⁴ and any other relevant development plan policies.
 - the effect on the openness of the Green Belt.
 - the effect on the character and appearance of the area.
 - the effect on Pear Tree Cottage, a Grade II listed building.
 - whether adequate provision would be made for affordable housing.
 - if the development is inappropriate, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development.

Reasons

Whether inappropriate

10. Paragraph 145 of the Framework⁵ makes it clear that the construction of new buildings in the Green Belt should be regarded as 'inappropriate'. However, a number of exceptions to this are listed. Of most relevance is the exception

³ Council Reference: PT17/2444/O and PT18/2466/RM

⁴ The National Planning Policy Framework.

⁵ National Planning Policy Framework (February 2019).

listed under paragraph 145 (e) which refers to *limited infilling in villages*. This approach is consistent with Policy CS5 of the Core Strategy⁶ which indicates that small scale infill development may be permitted within the settlement boundaries of villages situated in the Green Belt.

11. Hence, if the appeal proposals are to be treated as exceptions to inappropriate development it must be demonstrated that they would be situated in a village, would represent infilling and would be limited. In the Court of Appeal case in *Julian Wood v SSCLG and Gravesham Borough Council* [2015]⁷ it was common ground between the parties that the boundary of a village defined in the local plan may not be determinative for this purpose.
12. Both appeal sites are within the settlement boundary of Almondsbury according to the development plan and there is little dispute between the parties that they lie within a 'village' for the purposes of Green Belt policy. What is meant by 'limited' is not defined in either the Framework or the Core Strategy. However, given the size of Almondsbury and the relationship of the appeal sites to existing housing, it seems to me the appeal proposals would be relatively limited in scale (even if considered together as a 4 dwelling scheme).
13. While the term 'infilling' is not defined in the Framework, it is described in the Core Strategy glossary as *the development of a relatively small gap between existing buildings, normally within a built-up area*. Although this may include a gap within an established street frontage, the definition is sufficiently broad to reflect other situations where a development may be described as infill. For instance, I have been provided with an Appeal Decision⁸ where 4 dwellings were allowed on an open garden at the end of a cul-de-sac. It appears from the site plan that there was either built development or private garden space on three sides of the plot. In that particular case, the Inspector considered the proposal to be infill based on the form of surrounding development.
14. In this part of Almondsbury, the built-up edge of the village is defined by the recently constructed development of 10 dwellings, the garages and dwellings in Oaklands Drive and the private garden of Pear Tree Cottage. Beyond this established development, further to the south west, is predominantly open land which includes the two appeal sites.
15. The Appeal B site adjoins the recently constructed housing along its north east boundary and partially adjoins the housing in Oaklands Drive along its north west boundary. However, the south west and south east boundaries of the site adjoin predominantly open and undeveloped land. Similarly, while the site in Appeal A adjoins Oaklands Drive to the north west and faces the garden of Pear Tree Cottage to the north east, the south east and south west boundaries of the site also adjoin open land. It therefore seems to me that neither of the appeal proposals (whether considered as individual developments of 2 units or treated as a single scheme of 4 units) would be substantially enclosed by existing development. As such, the proposals differ somewhat from the example described in the Appeal Decision referenced above.
16. The larger area of open land which the appeal sites adjoin is loosely surrounded by other development, more widely spread out beyond the village boundary.

⁶ South Gloucestershire Local Plan Core Strategy 2006-2027.

⁷ *Julian Wood v SSCLG and Gravesham Borough Council* [2015] EWCA Civ 195

⁸ Appeal Decision: APP/M3645/A/13/2201516.

This includes Gloucester Road to the east (with buildings and structures on the other side of this road) and the Football Association headquarters and Police depot to the south. My attention has also been drawn to recently approved development to the west of the appeal sites, including new sports facilities and the redevelopment of the former Oaklands House site.

17. However, the open land covers quite a large area and the nearest buildings to the south west and south east of the two appeal sites are some distance away. As such, the appeal proposals could not be said to represent 'development of a relatively small gap between existing buildings' as defined in the Core Strategy. Indeed, the gap between the proposed housing and the existing development to the south west and south east would be relatively substantial. The new dwellings would appear as physical extensions to Almondsbury rather than infilling identifiable gaps within the urban form of the village.
18. This leads me to determine that the appeal proposals would not amount to limited infilling in villages for the purposes of Policy CS5 of the Core Strategy or paragraph 145 (e) of the Framework. As the appeal proposals would not meet any of the other exceptions listed in the Framework, it follows that they would represent inappropriate development in the Green Belt.
19. I understand that a review of the Green Belt was carried out as part of the West of England Joint Spatial Plan. The initial stages of the assessment separated the appeal sites from the wider area of open land to the south of Almondsbury, which the appellant takes to be an indication that the appeal sites do not serve any of the purposes of the Green Belt. While the situation may well change as the Joint Spatial Plan progresses, I am unable to give the assessment much weight in the current appeal as its findings have not yet been subject to full public consultation.
20. I therefore conclude on this issue that that both appeal proposals are inappropriate development which, by definition, is harmful to the Green Belt. The Framework advises that substantial weight must be given to this harm.

Any other harm

Effect on openness

21. In spatial terms, the appeal proposals would inevitably result in some loss of openness as the proposed dwellings would be constructed on undeveloped land. Considering the size and quantity of the dwellings, this would result in a moderate level of harm to openness in both Appeal A and Appeal B.

Effect on Character and appearance

22. The land between the M5 and the south of Almondsbury contains a number of buildings, many of which have a functional and utilitarian appearance. However, the area of undeveloped land which the appeal sites adjoin provides the village with an open foreground when seen from Gloucester Road and other distant vantage points, making a clear contribution to the setting of the village. As the proposed dwellings would encroach upon this undeveloped land, they would slightly diminish the open setting of Almondsbury.
23. I note that the frontages of the recently constructed housing to the north of Appeal Site B are oriented to face south, towards the open area of land. However, in contrast, the proposed dwellings would be orientated so their rear

elevations face this direction. Hence, boundary fencing and rear gardens (which are likely to contain domestic paraphernalia) would face towards Gloucester Road and surrounding viewpoints. While this may further diminish the setting of the village, the proposed landscaping scheme would help to mitigate the visual impact once the planting has matured.

24. The proposed dwellings in Appeal A would be seen at close quarters from the cul-de-sac in Oaklands Drive. Although their architectural style would differ from the existing housing in the cul-de-sac, there are already a mix of designs in the immediate vicinity and hence the dwellings would be in keeping with the wider urban surroundings. While the stone wall at the end of the cul-de-sac would be removed, it is not a particularly prominent feature in the street scene and therefore its loss would not result in undue harm.
25. The proposed dwellings in Appeal B would be seen at close range from the recently constructed development of 10 dwellings to the north. Given that the dwellings would be of similar style to the housing in the adjoining development, they would be compatible with the street scene in this location.
26. For the reasons given above, both appeal proposals would result in a small amount of harm to the character and appearance of the area. There would be some degree of conflict with the aims of Policy CS1 of the Core Strategy and Policies PSP1 and PSP2 of the PSP which, amongst other things, seek to preserve local distinctiveness.

Effect on listed building

27. Pear Tree Cottage is a historic The Grade II listed building situated to the west of the appeal sites. I understand that the property was originally surrounded by gardens and open space. However, since then, contemporary housing has been constructed in Oaklands Drive to the north and west of the cottage and hence the setting of the listed building is no longer entirely open.
28. Due to the nature of surrounding development, there are not many vantage points from which Pear Tree Cottage and the proposed dwellings would be viewed together. The relationship between the buildings would be most noticeable from Gloucester Road, looking across the area of open land towards the southern edge of Almondsbury. However, given the separation of the proposed dwellings in Appeal B from Pear Tree Cottage, any effect on the setting of the listed building would be negligible.
29. The proposed dwellings in Appeal A would be closer to Pear Tree Cottage, but the buildings would be sufficiently distanced to avoid a sense of enclosure. Pear Tree Cottage is already viewed against a backdrop of housing when seen from Gloucester Road and the proposed dwellings would not substantially change the setting of the listed building in this respect.
30. I therefore conclude on this issue that the appeal proposals would not harm the setting of Pear Tree Cottage. There would be no conflict with Policies CS1 and CS9 of the Core Strategy or Policy PSP17 of the PSP, insofar as they relate to the protection of heritage assets.

Affordable Housing

31. Policy CS18 of the Core Strategy seeks 35% on-site affordable housing on all new developments of 10 or more dwellings in urban areas. Only where it can

be demonstrated that the economic viability of a site is affected by specific factors may a lower percentage may be acceptable. Nevertheless, it is made clear that the Council will negotiate the maximum level of affordable housing that is feasible up to the 35% target. The policy also advises that a financial contribution in lieu of on-site provision will only be permitted in exceptional circumstances where it can be robustly justified.

32. No affordable housing contributions would need to be made if the appeal sites were to be considered in isolation. Only 2 dwellings are proposed on each site and Policy CS18 applies to schemes of 10 or more. However, paragraph 10.37 of the Core Strategy states that where recent sub-division has taken place, the whole site will be taken for the purpose of determining whether the scheme falls above or below thresholds for the provision of affordable housing.
33. In this case, it seems to me that the appeal sites (4 proposed dwellings) and the approved site⁹ (10 dwellings nearing completion) should be treated as a single development of 14 dwellings for the purposes of Policy CS18. The sites physically adjoin each other and, in practice, development of the appeal sites would represent an extension of the 10 already approved. There is also a common planning history, insofar as all of the land was subject to an earlier planning application¹⁰ where it was treated as a single site.
34. Because the proposals would create a development of 14 new dwellings, the scheme would trigger a 35% on-site affordable housing contribution under Policy CS18. This amounts to a requirement for 4.9 affordable dwellings to be provided across the whole site. At the hearing, Mr Stokes argued that the 35% target should only be applied to the 4 additional dwellings being proposed. However, there is little in the wording of Policy CS18 or the Core Strategy supporting text to indicate that this should be the case.
35. The Council's evidence contains numerous examples of how affordable housing policy has been implemented on other sites. Some of these are less relevant to the current appeals as they refer to cases that pre-date the Core Strategy, are located in other parts of the country, or otherwise reflect different site circumstances. However, none of the examples discussed at the hearing give me much reason to conclude that the requirement for 35% on site affordable housing should only apply to the 4 dwellings being proposed in the current appeals rather than the wider site area of 14 dwellings.
36. This includes the proposal for 5 dwellings at Goose Green Way in Yate¹¹ which was considered to be an extension of a neighbouring scheme for 26 dwellings (which the Council had previously approved). In this particular case, the Council had already sought an affordable housing contribution from the original development of 26 dwellings. Therefore, the 35% target was only applied to the 5 additional dwellings which were proposed.
37. Similarly, a proposal for 6 cottages at the former Council Offices in Thornbury¹² only generated an affordable housing contribution of 2 dwellings even though it was part of a previously approved scheme of 63 dwellings. This was because the original development of 63 units had already triggered an affordable housing contribution and was subject to its own planning obligation.

⁹ Council Reference: PT17/2444/O and PT18/2466/RM

¹⁰ Council Reference: PT16/4730/F

¹¹ Council Reference: PK18/2610/F

¹² Appeal Decision: APP/P0119/W/18/3196004 and Council Reference: PT18/2930/F.

38. In these cases, the original developments were already large enough to have triggered the 35% affordable housing contribution. Hence, there was no need for the Council to retrospectively seek affordable housing on parts of the development that had already been approved. This is a slightly different situation from the current appeals where no affordable housing was provided as part of the original development of 10 dwellings.
39. Although the appeal proposals would trigger an affordable housing requirement of 4.9 dwellings (35% of 14) whether or not this is achievable clearly depends on the individual circumstances of the development. With this in mind, the Council commissioned an independent viability assessment which was carried out by Mr Williams on behalf of District Valuer Services. While the appellant had carried out an earlier viability assessment, Mr Stokes informed me at the hearing that he mainly accepted the calculations in the District Valuer report (although not how the Council were interpreting the results).
40. The District Valuer Report indicates that it would not be viable to provide the equivalent of 4.9 affordable homes as this would incur a deficit of £86,704. However, it would be viable to provide a total of 4 affordable dwellings on the site, comprising 3 social rented and 1 shared ownership.
41. For this to be implemented, all of the dwellings proposed in the current appeals would need to be affordable. The District Valuer report shows that 4 affordable dwellings would not be viable in their own right. It is only when they are taken as being part of a wider development of 14 that they become viable. However, given that 10 dwellings already have planning permission, with no requirement to provide any affordable housing, it seems unlikely that there would be much incentive to build 4 affordable homes on the appeal sites. This raises the question of whether the Council's expectations are realistic.
42. I understand that there were disused buildings on parts of the site where the 10 recently constructed dwellings now stand. The appellant informs me that if the site as a whole (including the appeal sites) had originally been proposed as a development of 14 dwellings, then Vacant Building Credit would have been taken into account when calculating the affordable housing contribution. This would have resulted in a requirement for 2.63 affordable dwellings, less than the 4 affordable dwellings currently being sought by the Council.
43. I accept the Council's point that there are no longer any disused buildings on the site to which Vacant Building Credit can be applied. However, thresholds for affordable housing provision are calculated on the basis of whole sites, rather than sub-divided areas of land, to prevent developers from avoiding making any contributions. Where land has been sub-divided, the main aim is to ensure that a similar quantity of affordable housing is provided as would have been the case if whole site was originally developed. In this case, it is evident that that the site would have delivered fewer than 4 affordable homes if it were originally developed as a site of 14 dwellings.
44. During the course of the hearing, the appellant submitted revised unilateral undertakings¹³ for both appeal sites. In combination, these would provide a financial contribution for off-site affordable housing amounting to £204,118 (£118,854 for Appeal A and £85,264 for Appeal B). These sums correspond

¹³ Dated 12 February 2020.

with the financial surpluses identified in the District Valuer Report based on the development of a 4 unit scheme.

45. The £204,118 being offered is less than the off-site contribution of £289,989 that the Council would seek in-lieu of 4 affordable dwellings. However, my understanding is that it would exceed the financial contributions that would be payable in lieu of 2.6 affordable dwellings (which would have been the requirement if the whole site was originally developed for 14 dwellings and Vacant Building Credit had been applied).
46. I note the Council's point that the sum being offered is a 'compromise' being driven by site finances rather than compliance with the development plan. However, while Policy CS18 seeks a 35% contribution, this is a target and it is stated that *in implementing this policy the Council will negotiate the maximum level of affordable housing on each site that is feasible up to the 35% figure*. For the reasons stated above, I am not convinced that there would be much incentive for a developer to construct 4 affordable houses on the appeal sites, or to pay an off-site contribution of £289,989.
47. The evidence indicates that the £204,118 being offered is the maximum that the proposed developments would be able to provide whilst remaining viable. Although Policy CS18 says that a financial contribution will only be acceptable in exceptional circumstances where it can be robustly justified, I am conscious that the site is somewhat constrained insofar as 10 dwellings already benefit from planning permission with no requirement for affordable housing. Given the overall circumstances of this case, it seems to me that the financial contributions being offered would comply with the aims of Policy CS18.
48. The unilateral undertakings would meet the relevant tests (being necessary, directly related to the development and fairly related in scale and kind). Appropriate provision would therefore be made for affordable housing and no harm would arise from this aspect of the appeal proposals.

Whether very special circumstances exist

49. The Framework indicates that development that is harmful to the Green Belt should not be approved except in very special circumstances. For such circumstances to exist, the harm to the Green Belt and any other harm must be outweighed by other considerations.
50. I have found that the proposal would be inappropriate development and the Framework establishes that 'substantial weight' should be given to this harm. Added to this is the moderate harm arising through loss of openness and a small amount of harm to the character and appearance of the area.
51. I am mindful that the appeal proposals would each make financial contributions towards off-site affordable housing provision. I heard at the Hearing that there is a pressing need for such housing in the area and hence these contributions would clearly be of benefit. Taking into account the relatively small scale of the development and the level of financial contributions generated, I assign these benefits moderate weight. For similar reasons, I also assign moderate weight to the benefits of boosting general housing supply. Added to this would also be a small economic benefit arising from the construction process. As the public open space contributions simply mitigate the impact of the proposed housing, there are no particular benefits arising from this.

52. Overall, the benefits of each appeal proposal do not clearly outweigh the substantial harm caused by inappropriate development within the Green Belt (added to which is the moderate harm to openness and small harm to character and appearance that would arise). Therefore, the harm I have identified is not clearly outweighed by other considerations sufficient to demonstrate very special circumstances.

Conclusion

53. For the reasons given above, I therefore conclude that Appeal A and Appeal B should be dismissed.

Colin Cresswell

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Kit Stokes

Stokes Morgan Planning

John Clarke

Martin Lally

FOR THE LOCAL PLANNING AUTHORITY:

Simon Penketh

South Gloucestershire Council

Tracey Price

South Gloucestershire Council

Tony Williams

District Valuer Services

DOCUMENTS SUBMITTED AT THE HEARING:

1. Statement of Common Ground (updated).
2. Unilateral undertaking for Appeal A dated 11 February 2020.
3. Unilateral undertaking for Appeal B dated 11 February 2020.
4. Unilateral undertaking for Appeal A dated 12 February 2020.
5. Unilateral undertaking for Appeal B dated 12 February 2020.

DOCUMENTS SUBMITTED AFTER THE HEARING:

1. Council comments on unilateral undertakings (by email).