
Appeal Decision

Site visit made on 25 February 2020

by J Gibson BUEP MPIA

an Inspector appointed by the Secretary of State

Decision date: 22 June 2020

Appeal Ref: APP/P0119/W/19/3241794

Conifers, 28 Engine Common Lane, Yate BS37 7PX

- 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 Mr Whittard and Mrs Purchase against the decision of South Gloucestershire Council.
 - The application Ref PK18/5500/O, dated 23 November 2018, was refused by notice dated 24 May 2019.
 - The development proposed is described as the "erection of 2no. dwellings (Outline) with access to be determined. All other matters reserved".
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was made in outline with all matters reserved apart from access. I have had regard to the plans referenced on the Council's decision notice and have regarded all elements of those drawings as indicative other than those relating to the proposed access arrangements.

Main Issues

3. The main issues are:
 - whether the site would be a suitable location for housing, having regard to policies which seek to restrict development in the countryside;
 - the effect of the proposed access to Engine Common Lane on highway safety; and
 - the effect of the proposed access to Engine Common Lane on the character and appearance of the surrounding area, with specific regard to trees.

Reasons

Whether the site would be a suitable location for housing

4. The main parties have described the appeal site as being located within the open countryside. The open countryside relates to land outside of the urban areas and settlement boundaries defined under the South Gloucestershire Local Plan (LP): Core Strategy (CS) (adopted December 2013) and the Policies, Sites and Places Plan (PSPP) (adopted November 2017). The closest defined settlements to the appeal site include Yate to the south east and Engine

Common to the south west along North Road. The appeal site does not appear to relate well with either settlement, spatially or physically, due to the surrounding pattern of open paddocks and agricultural land which separate and distinguish the site from the more urban characteristics within the defined settlement boundaries. As such, the appeal site and its immediate surroundings appear distinctively rural in character, with a sporadic ribbon of residential development along Engine Common Lane and some emerging clusters of residential development off Tanhouse Lane close to North Road. Accordingly, having regard to the development plan I also consider the site to be within the open countryside.

5. Policy CS5 of the CS sets out the framework for the location and scale of development in the district. Policy CS34 supports this by guiding the specific outcomes for development in rural areas. Through these policies, the CS seeks to direct new development towards areas within defined settlement boundaries and strictly limit new development in the open countryside. Policy PSP40 of the PSP sets out the circumstances in which residential development in the open countryside will be acceptable. None of the circumstances under Policy PSP40 would be satisfied by the appeal proposal. As such, the proposed development of this site in open countryside would conflict with those LP policies. As the evidence before me indicates that the Council is able to demonstrate a five year supply of deliverable housing land, I afford considerable weight to those policies and to the conflict with them.
6. The appellants argue that although the Council has demonstrated their five year housing land supply the latest data available shows a shortfall with respect to the Council's annual target for windfall/small sites. On the basis that the appellants consider the appeal site to represent previously developed land, they contend that the proposed development would positively contribute towards the Council's suggested windfall/small site annual shortfall and should favourably weigh against any conflict with the LP policies.
7. The evidence indicates that the Council can demonstrate a five year housing land supply. That supply includes allowance for windfall sites. However, the appropriateness of windfall sites must still be considered alongside the Council's strategic framework for the location of development, which seeks to achieve sustainable patterns of growth by locating development in existing settlements as the most accessible locations, and to protect the open countryside. This approach is consistent with Paragraph 68 of the National Planning Policy Framework (the Framework) which, in supporting the development of windfall sites, states that great weight should be given to the benefits of using suitable sites within settlements for homes.
8. With this in mind, while it has been suggested that the appeal site could appropriately accommodate the proposed dwellings and associated garden areas, this alone does not justify locating such development in the open countryside. There may be some opportunities to access public transport in the vicinity of the site, and also to walk or cycle to reach some facilities. However, notwithstanding the absence of a specific objection from the Council on accessibility grounds, there are nonetheless likely to be more accessible locations for development with regard to other services and facilities, in line with the strategic framework under Policy CS5 of the CS. As such, based on the evidence before me, I conclude that the very limited contribution of the appeal proposal towards the Council's windfall/small site target, and its overall

housing delivery, does not justify allowing such development in the open countryside in conflict with the LP policies in this instance.

9. I have been referred to a number of recent planning permissions granted by the Council for residential development close to the appeal site. However, very limited information on those cases has been provided for my consideration. As such, I cannot be certain of the circumstances or context in which those permissions were granted, or whether they are directly comparable in all respects to those in the case before me. In any event, I have considered the current appeal on its own planning merits.
10. Taking all of these factors into account, I conclude that the appeal site would not be a suitable location for housing, having regard to policies which seek to restrict development in the countryside. The proposal would conflict with the requirements of Policies CS5 and CS34 of the CS, Policy PSP40 of the PSPP and those of the Framework as set out above.

Highway safety

11. The appeal proposal includes the creation of two new vehicle accesses. The access for proposed Plot 1 would be from Tanhouse Lane and would be facilitated by the widening of the existing access to accommodate for both Plot 1 and the existing dwelling. The access for proposed Plot 2 would be via a new access from Engine Common Lane which would run close to the shared boundary with Newland House to the south.
12. Concerns have been raised regarding the proposed access along Engine Common Lane and whether appropriate visibility lines exiting the site would be achieved. On the basis of the submissions before me, it appears that achieving visibility splays to the south when leaving the site would rely in part on land which is not within the appeal boundary and which does not appear to be in the appellants' ownership or control. The land includes a hedge and overhanging branches of trees running along the front boundary of Newland House. Based on the details before me and my own observations, it is my view that the vegetation on this land could obstruct the necessary views to the south for vehicles to safely exit the appeal site. As I cannot be certain that the maintenance and clearing of that vegetation would be within the control of the appellants, I cannot be certain that satisfactory visibility in that direction could be provided and consistently maintained.
13. The portion of Engine Common Lane near the proposed access is relatively narrow, with no separate pedestrian footway and little verge available. As such, more vulnerable users such as pedestrians, cyclists and horse riders would have to share the road carriageway with vehicles, with limited space for refuge or passing. Consequently, there is the potential for vehicles, pedestrians and other users of the highway to be present within the road and close to the carriageway edge to the south of the proposed access.
14. If appropriate visibility lines to the south of the proposed Engine Common Lane access were not achieved and safeguarded, I cannot be certain that drivers emerging from the appeal site would adequately see such oncoming road users approaching the site before deciding to move into the carriageway. This would create a potential conflict between vehicles exiting the appeal site and pedestrians, cyclists, horse riders and other vehicles travelling north along Engine Common Lane. Whilst there may be other driveways along Engine

Common Lane appropriate visibility to the south has not been adequately demonstrated for the proposed access in this case. Irrespective of the vehicle speeds nearby or the number of vehicle movements from the appeal site, this would in my view represent an unacceptable risk to the safety of those road users.

15. The appellants have also suggested that the relocation of the access driveway away from the shared boundary with Newland House would appropriately resolve any suggested highway safety concerns. However, such an amended scheme has not been put forward for consideration and I am therefore required to make a determination on the appeal proposal before me, consistent with the proposal the Council's decision is based on and that which interested party views were sought.
16. Based on the information provided I am not satisfied that a demonstrably safe access would be provided to Plot 2, having regard to the safety of those accessing the site and other highway users. Furthermore, given the level of uncertainty and the potential implications for safety for vehicles and pedestrians which could arise, I am not satisfied that such matters could appropriately be dealt with by condition. I therefore conclude that the proposal would conflict with Policies CS1 and CS8 of the CS, and Policy PSP11 of the PSPP. These policies collectively seek, amongst other things, to ensure development provides safe access which does not compromise highway safety for all users, and are consistent with the Framework which requires applications for development to ensure that safe and suitable access to the site can be achieved for all users.
17. Based on my review of the Waste Collection Supplementary Planning Document (adopted January 2015), referenced in the Council's reason for refusal, I am satisfied that it is not relevant to the determination of this matter as it does not include any provisions which relate to visibility lines and access design.

Character and appearance/Tree protection

18. The appeal site and surrounding area benefits from a number of mature trees which positively contribute towards the rural characteristics of the open countryside. Relevant to this appeal are the mature trees which run along the shared boundary between the appeal site and Newland House, of which the trees are located on the Newland House side of the boundary. These trees appear prominent within the surrounding landscape and collectively make a positive contribution towards the verdant character of the area.
19. A Tree Preservation Order (TPO) applies to all trees within the appeal site, on the neighbouring property of Newland House, and extends to cover a wider area beyond, protecting those trees and the valuable contribution they currently serve in reinforcing the natural characteristics of the area as rural land in the open countryside. The Council has expressed concerns that the close proximity of the proposed access to these trees may have a harmful effect on their long term protection and wellbeing.
20. The Tree Survey and Arboricultural Impact Assessment (TS&AIA) submitted by the appellants identifies the trees along the southern boundary shared with Newland House to be 'Category B' trees of 'moderate quality' and refers specifically to their collective visual contribution to the area and to the screening that they provide. This supports my view that these trees represent

a positive feature within the surrounding landscape which should be protected in the interest of preserving local character and appearance. The TS&AIA refers to the root and canopy encroachment of those trees into the site as negligible. However, the Tree and Group Locations and Root Protection Areas drawing at Appendix 2 of the TS&AIA indicates the root protection areas for a number of these trees extend into the appeal site. Based on the site access details shown on the proposed plans, it appears that the new access to Engine Common Lane would encroach within these identified root protection areas.

21. The TS&AIA describes the root protection areas as the minimum area of ground that should be left undisturbed around trees, setting out that any proposed building or hard landscaping works should be planned outside them and that soil levels should not be altered within them. Based on the evidence before me and given the apparent overlap between the proposed driveway and the root protection areas of those trees, I consider that there is the potential for such works to adversely affect those trees and their long term health and stability. Due to the limited information before me I cannot be certain of the exact nature or extent of works required to construct the driveway for Plot 2, including any necessary level changes, excavation, or installation of hard surfacing, or whether such works could be carried out in a way so to avoid or mitigate potential harm to those trees. Furthermore, no specific protection measures were recommended for implementation to protect these trees from works associated with the proposed access.
22. I therefore cannot be certain that the works to construct the access to Plot 2 could be carried out without adversely affecting the long term health or retention of those trees. Given the level of uncertainty and the potential implications for character and appearance if those trees were to be adversely affected, and as approval is sought for the proposed access, I am not satisfied that such matters could be appropriately dealt with by condition in this instance.
23. As such, I cannot be certain that the proposed development could be carried out without harm to the character and appearance of the area, with regard to trees. I therefore conclude that the proposal would conflict with Policies CS1 and CS9 of the CS, and Policies PSP2 and PSP3 of the PSPP. These policies seek, amongst other things, to ensure new development is designed to a high standard which protects and enhances the natural environment and landscape character, consistent with the Framework which requires development contributes to and enhances the natural local environment by recognising the intrinsic character and beauty of the countryside.

Other Matters

24. The appellants state that concerns regarding the effects of the proposed access to Engine Common Lane with respect to highway safety and character and appearance/tree protection were not raised by the Council during the application process. They suggest that had this occurred the matters could have been appropriately addressed at that time. Notwithstanding this, I have considered the proposal before me on its planning merits. Matters relating to the Council's processing of the application do not alter my conclusions above.

Conclusion

25. For the reasons given above the appeal should be dismissed.

J Gibson

INSPECTOR