



Appeal Decision

Site visit made on 29 June 2020

by **B Davies MSc FGS CGeol**

an Inspector appointed by the Secretary of State

Decision date: 28 July 2020

Appeal Ref: APP/G1630/W/20/3250825

Tree Tops, Church End Lane, Twyning, Tewkesbury, GL20 6DA

- 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 David Webb against the decision of Tewkesbury Borough Council.
 - The application Ref 19/00689/FUL, dated 2 July 2019, was refused by notice dated 15 October 2019.
 - The development proposed is the erection of two self-build dwellings.
-

Decision

1. The appeal is allowed. Planning permission is granted for the development of two self-build dwellings at Tree Tops, Church End Lane, Twyning, Tewkesbury, GL20 6DA in accordance with the terms of the application, Ref: 19/00689/FUL, dated 2 July 2019, subject to the conditions set out in the attached schedule.

Main issues

2. The main issues are:
 - Whether or not the appeal site is a suitable location for residential development, having regard to local and national policies for housing in the countryside;
 - The effect of the proposal on the character and appearance of the area.

Reasons

3. The site is in a rural area between the small villages of Church End and Shuthonger, in proximity to a junction with the A38. It has been occupied by a mobile home for nearly 50 years, in addition to more recent outbuildings and a detached double garage to the front of the property. Large, modern detached houses can be seen to either side and opposite, and there is another mobile home on the adjacent plot. Together with the large caravan park opposite, and through virtue of the houses being arranged around a bend in the road with a wide grassy verge, the area has the feel of a small hamlet.
4. The wider area comprises flat, tree lined agricultural fields and a Public Right of Way runs adjacent to the site along the side of the field behind. The field is associated with a 2017 planning permission¹ for construction of 4 houses, the ground works of which appeared to have started by the time of the site visit.

¹ 17/00452/OUT

Location

5. The site is not in a rural service village as defined by Policy SD2 of the Joint Core Strategy 2011 to 2031 (adopted December 2017)(JCS). There is provision for infilling on the basis that SD10(4ii), as written, includes all villages, not just those identified as service villages. However, Policy G2 of the Twyning Parish Neighbourhood Development Plan (2011-2031, made January 2018²)(NDP) is clear that infill is only appropriate within a defined development boundary, which this site is not.
6. Policy GD1 of the NDP states that housing in the open countryside will be supported if it is a replacement dwelling. Addition of the second house would constitute an additional dwelling and would therefore not be consistent with this aspect of the policy.
7. However, Policy GD1 of the NDP allows for housing in the open countryside if a future local plan identifies a need for additional residential development. In May 2020, the Council submitted the draft Tewkesbury Borough Plan (the PSTBP) for examination, which in part responds to an additional need for housing land supply. In line with paragraph 48 of the National Planning Policy Framework (2019), I give some moderate to the emerging plan given that it is at an advanced stage. Objections to relevant policies are yet to be resolved, but as all appear to argue for more flexibility to build in the countryside, they are not contrary to this proposal. Emerging Policies RES3, RES4 and RES5 together allow very small-scale housing in the open countryside.
8. I consider that 2 additional houses would be proportionate to the size of this hamlet, and in being central and on an already developed plot they would relate well to existing buildings and not cause coalescence of settlements, which is discouraged by emerging Policy RES4. I do not have a definition of 'rural settlement' in the context of this policy before me, but as the site is closely surrounded by a small community of other houses in a rural area, it could reasonably be interpreted as such. In addition, the permission granted in 2017 for 4 houses in the field immediately behind would intensify the pattern of development, making the proposal appear more in keeping with the prevailing pattern of development. The proposal would therefore meet the requirements of the emerging policies of the PSTBP, which are likely to become part of the development plan via Policy GD1 of the NDP.
9. The access towards Church End is single lane, but I observed cyclists comfortably using it during the site visit. The road is not served by pavements or street lighting, but verges are wide for much of the short walk to the main road, on which there is a bus stop with a regular, if not frequent, bus service. In addition, the adjacent Public Right of Way allows people to access the wider footpath network. I am therefore satisfied that there is credible choice of transport and that the proposal meets the requirements of INF1 of the JCS.
10. Although the proposal does not meet the requirements of Policies SD10 or Policy G2, there is potential support for small-scale development in the countryside in emerging policies RES3, RES4 and RES5.

² The NDP was brought into legal force on 17 April 2018

Character and appearance

11. Nearby detached buildings are in large plots, whereas the proposed houses would be close together in narrow plots, and the front elevation of the house in Plot 2 would be untypically close to the road. The housing would therefore appear cramped when compared to the prevailing character of development.
12. Policy GD5 states that car parking should be to the side of dwellings and behind the building line, where possible. In both cases the garages are in front of the house and, at least on Plot 2, it may have been possible to reconfigure the design to enable the garage to stand to the side of the dwelling.
13. A second house and two-storey development may reduce the sense of openness along this stretch of road. However, as there are existing structures on the site, houses either side and permission for houses behind, I do not consider any loss of openness to be to the detriment of local character or to constitute loss of an important public view, which would be protected by NDP Policy GD4. The garden would be visible from public vantage points, including the road and the path. However, as the development is surrounded by dwellings and the plot is already used for residential purposes, I do not consider continuation of this to be harmful to the rural character of the area.
14. Overall, the proposal is therefore in conflict with Policies SD4 of the LP, and GD3 and GD5 of the NDP, which together require that development responds positively to the character of the site and its surroundings.

Planning balance

15. Tewkesbury BC is not able to demonstrate a five-year supply of deliverable housing sites. I have noted the discussion regarding the extent of this deficit, but for the purposes of my decision it is sufficient to conclude that there is at best only 4.3 years' supply. This means that the presumption in paragraph 11d of the Framework applies and the adverse impacts therefore need to significantly and demonstrably outweigh the benefits when assessed against the Framework as a whole.
16. The benefits of the scheme are that it would provide an additional house, which would support the vitality of the rural community and local services in line with paragraph 79 of the Framework, although the benefit of this is limited by the small scale of the development.
17. I give limited weight to the conflict with housing location policies in the LP, given that they are out of date. I give significant weight to the NDP, with which the proposal conflicts. However, the advanced emerging policies provide support for small-scale development, and as the NDP is committed to incorporating these, I give this factor moderate weight.
18. Twynning has at least a technical shortfall in self-build housing of between 1 and 4 houses. I have noted the Council's selection of additional criteria to define self-build, but the fact remains that these are not recorded as such and I must therefore treat this as speculative. The proposal meets the definition of 'self-build' as described in the Framework and, given the shortfall of these schemes locally, I give significant weight to the benefit from this.
19. However, the development would be cramped when compared with the prevailing pattern and parking would not be in the ideal configuration, and

therefore inconsistent with paragraph 127 of the Framework, which recommends that developments are appropriately laid out and add to the overall quality of the area. I give significant weight to the harm from this.

20. When the tilted balance is taken into account as an important material consideration, I find that the adverse impact of the proposal does not significantly and demonstrably outweigh the benefits described above, and on this basis, I consider it appropriate that permission is granted.

Other matters

21. Policy H5 of the NDP states that applications for the replacement of mobile homes by permanent dwellings on sites where residential development is inappropriate will not be supported. However, for the reasons above I have concluded that, on balance, the development is not inappropriate for residential development and there is therefore no conflict with this policy.
22. Given the proximity of the site to other houses in the settlement, I do not consider that the development would meet the definition of 'isolated' as defined by the Braintree case³, and I have therefore not applied the requirements of paragraph 79 of the Framework.

Conditions and obligation

23. The Council requests that 15 conditions be imposed, most of which I have included in the Schedule, with amendments to wording and structure for the purposes of clarity and avoidance of repetition.
24. In addition to the statutory time limit (1), Condition (2) specifies the relevant drawings to provide certainty.
25. I have combined the Council's proposed conditions 3, 4 and 5 into two conditions (3) and (4). The purpose of these conditions is to ensure that long term drainage of both foul and surface water is satisfactory. I do not consider that this needs to be a pre-commencement condition because of the small size of the development.
26. Conditions (5), (6) and (7) secure appropriate materials, to protect the appearance of the area.
27. Conditions (8) and (9) are to avoid an unacceptable impact on highway safety by ensuring that adequate visibility is provided and maintained through provision of a safe, suitable and secure means of access. I do not consider it necessary to include a condition to secure loading area, storage and wheel washing facilities, given the small size of the development.
28. Condition (10) is to safeguard trees and to preserve the visual amenity of the area.
29. Conditions (11) and (12) are necessary to safeguard neighbours from overlooking and loss of privacy. I have removed reference to 'roof lights' from the original condition because I do not consider that insertion of these would lead to harm.

³ Braintree District Council v Secretary of State for Communities and Local Government & Ors [2017] EWHC 2743 (Admin) (November 2017)

30. A Section 106 obligation is an appropriate method to secure the important self-build element of the development and matters associated with this. In being necessary, proportionate and reasonable I am satisfied that the obligation before me, signed by both parties, meets all 3 tests.

Conclusion

31. For the reasons above, and having regard to all other matters raised, the appeal should be allowed.

B Davies

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the application form and following approved plans: 651/01, 651/03 F, 651/04 A, 651_05, 651_06, 651_200 D, 651_400 D.
3. None of the dwellings hereby permitted shall be occupied until works for the disposal of sewage shall have been provided on the site to serve the development hereby permitted, in accordance with details that have first been submitted to and approved in writing by the local planning authority.
4. No building hereby permitted shall be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
 - i. provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - ii. include a timetable for its implementation; and,
 - iii. provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.
5. No construction of the external walls shall take place until samples of all external facing materials have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved sample details.
6. No construction of the roof shall take place until samples of all external facing materials have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved sample details.
7. No construction of the vehicular driveway, parking and turning areas shall take place until samples of all external facing materials have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved sample details.
8. The new vehicular access hereby permitted shall not be brought into use until the splays illustrated on Drawing 651/03 F have been provided. The area between those splays and the carriageway shall be reduced in level and thereafter maintained so as to provide clear visibility between 1.05m and 2.0m

at the X point and between 0.26m and 2.0m at the Y point above the adjacent carriageway level.

9. The buildings hereby permitted shall not be occupied until the vehicular parking and turning facilities have been provided in accordance with drawing 651/03 F and those facilities shall be maintained for those purposes thereafter.
10. If, within a period of 5 years from the date of planting, the trees (or any tree planted in replacement) are removed, uprooted, destroyed or die or become, in the opinion of the local planning authority, seriously damaged or defective, another tree of the same size and species as that originally planted shall be planted at the same place within the first planting season following the removal, uprooting, destruction or death of the original tree unless the local planning authority gives its written consent to any variation.
11. The buildings hereby permitted shall not be occupied until the windows at eastern and western elevations have been fitted with obscured glazing, and no part of those windows that is less than 1.7 metres above the floor of the room in which it is installed shall be capable of being opened. Details of the type of obscured glazing shall be submitted to and approved in writing by the local planning authority before the window is installed and once installed the obscured glazing shall be retained thereafter.
12. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no windows/dormer windows other than those expressly authorised by this permission shall be constructed on the eastern or western elevation.