
Appeal Decision

Site visit made on 8 September 2020

by Stuart Willis BA Hons MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 October 2020

Appeal Ref: APP/P1615/W/20/3253117

Land adjoining 1 Hawkwell Row, Drybrook GL17 9DE

- 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 Terry Ward against the decision of Forest of Dean District Council.
 - The application Ref P0868/19/OUT, dated 31 May 2019, was refused by notice dated 29 November 2019.
 - The development proposed is the erection of up to four dwellings with associated landscaping, parking and works and demolition of existing buildings.
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Decision

1. The appeal is allowed, and outline planning permission is granted for the erection of up to four dwellings with associated landscaping, parking and works and demolition of existing buildings at Land adjoining 1 Hawkwell Row, Drybrook GL17 9DE in accordance with the terms of the application, ref P0868/19/OUT, dated 31 May 2019, subject to the conditions set out in the attached schedule.

Procedural Matters

2. I have taken the description of development in the banner heading above from the decision notice, removing elements that are not development. Although different to the one given on the application form, it has been indicated that a change was agreed.
3. Outline planning permission is sought with all matters reserved. I have had regard to the details on Site Plan as Proposed Drawing No 1729.02A and Streetscene Drawing No 1729.04 but have treated them as illustrative. I have determined the appeal on this basis.

Main Issues

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

Reasons

Suitability of Location

5. The appeal site is outside of the settlement boundary of Cinderford as delineated in the Forest of Dean Allocations Plan 2006 to 2026 (Allocations Plan) and Forest of Dean Core Strategy (Core Strategy). However, it is within the boundary of the Cinderford Northern Quarter Area Action Plan (AAP).
6. Policy CSP.5 of the Core Strategy sets out the housing strategy stating that priority will be given to development on previously developed land and on sites identified for housing in the development plan. Policy CSP.4 states that most changes in towns and villages will be expected to take place within the existing settlement boundaries, unless or until they are replaced by other LDF documents (for example an Area Action Plan). Areas outside settlement boundaries are treated as part of the open countryside. The policy also requires development to reinforce existing settlement patterns.
7. The AAP states that it sits within the Local Development Framework and contains a list of policies specific to the Northern Quarter area which will be used to judge planning applications which come forward for the site (page 9). The appeal site is not allocated for residential development, which Policy 22 of the AAP states would be focused in the Steam Mills Village West character area. However, while it is not part of the specific character areas defined, it is identified as 'possible developable land' in the Cinderford Northern Quarter Masterplan & Design Code (fig 3.2). Moreover, there has been no compelling evidence presented to me to indicate that the site is specifically excluded from housing development or safeguarded for recreation or biodiversity purposes.
8. Policies CSP.5 and CSP.4 of the Core Strategy along with Policy 22 of the AAP seek to direct development to certain locations. Notwithstanding this, giving priority, focus, or locating most development in certain places does not imply that there will be no housing outside of the identified areas. Furthermore, the site is located within the AAP boundary.
9. There is already some built form on the site, hard surfacing as well as parked vehicles and materials being stored. Moreover, whether previously developed land or not, the site is well related to existing housing with a row of properties adjacent and would follow the existing linear pattern of development. As such, it would not be isolated in the context of paragraph 79 of the National Planning Policy Framework (Framework). In addition, the scheme is of a small scale and would not prevent housing strategies being implemented or most development being focused elsewhere.
10. Policy CSP.16 of the Core Strategy, amongst other things, requires developments at villages to take into account the scale, function and level of services accessible from their location and the availability of public transport. Where appropriate, it states that the defined settlement boundary will be a key determinant in judging the acceptability of proposals. CSP.1 of the Core Strategy states that developments should demonstrate an efficient use of resources. The Framework recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas.
11. While there are no large convenience stores or designated cycle routes nearby, some services, including a primary school, could be accessed on foot. At my

visit I saw that the main road was relatively busy. Nevertheless, it is not uncommon that crossing roads will be necessary to reach services and facilities. I saw that much of the routes involved would have a footway and were generally serve by street lighting. In addition, the lane in front of Hawkwell Row would be away from the main road.

12. The Council indicate that the closest bus stops to the site are no longer in service. Notwithstanding this, there are other stops within an acceptable walking distance of the site with several bus services being available. Therefore, occupiers of the appeal site would be able to access facilities and services, including those to deal with their basic needs without reliance on private motor vehicles.
13. Although not of a large scale, the proposal would bring social benefits in terms of housing supply, economic benefits from the construction and occupation of the dwelling and support for existing services and facilities.
14. Consequently, the site would be a suitable location for housing having regard to local and national planning policies, proximity to services and reliance on private motor vehicles. It would comply with Policies CSP.1, CSP.4, CSP.5 and CSP.16 of the Core Strategy. These, in part, seek to ensure there is an efficient use of resources and direct most changes to within settlement boundaries or sites identified for housing. Moreover, it would accord with the Framework where it aims to limit the need to travel and offer a genuine choice of transport modes.
15. Policy AP 1 of the Allocations Plan is included in this refusal reason. The supporting text for Cinderford and Ruspidge (page 75) in the Allocations Plan states that it provides planning policies and proposals for the whole of the Forest of Dean District with the exception of the area covered by the Cinderford Northern Quarter Area Action Plan and that the AAP functions like an inset into the Allocations Plan (page 76). Therefore, this policy weighs nor for nor against the proposal.

Character and Appearance

16. The appeal site is located at the end of a terrace of cottages. These properties front on to a lane with their gardens to the rear creating separation between the dwellings and the main road. The site is in a prominent corner location with views into the site from several directions.
17. The lower part of the appeal site is largely grassed and is screened by mature boundary vegetation. Notwithstanding this, there are utilitarian structures, vehicles, many of which are in a poor condition, hard surfacing and outdoor storage areas across large parts of the site. The size and position of these, and the sloping land, results in these features being visible, at least in part, from nearby properties and the adjacent roads over the boundary treatments. The current appearance of the site is in contrast to the residential properties and gardens adjacent and also to the undeveloped open areas of countryside nearby.
18. The proposed housing would be viewed with the adjacent row of properties. As such, the presence of some form of residential development would not be at odds with the existing character of the area. The scheme would replace the existing structures on site and hard surface parking areas would be at ground

level, as they are at present. Existing landscape features are said to be retained and there would be potential for additional planting that would help to soften the appearance of the development.

19. The illustrative plans show semi-detached properties located at the lower end of the site, in contrast to the existing terrace properties above. However, the proposal seeks outline permission with all matters reserved and for up to 4 dwellings. Consequently, there could be an alternative layout, scale, position, spacing and number of properties to that shown on the illustrative plans. These would be considerations of the reserved matters submission as would the external appearance of the properties. The evidence before indicates that some form of residential development could be accommodated at the site.
20. Therefore, the proposal would not harm the character and appearance of the area. It would accord with Policy CSP.1 of the Core Strategy where it, in part, states that new development must take into account important characteristics of the environment. Furthermore, the scheme would accord with the Framework where it states that development should be sympathetic to local character.
21. Policies AP 1 and AP 4 of the Allocations Plan are included in the refusal reasons. However, as above, these policies weigh neither for nor against the proposal.

Other Matters

22. Access is a reserved matter and therefore details would be addressed at that time. In the absence of any compelling evidence to the contrary, I see no reason to reach a different finding from the Council in considering that a safe means of access and sufficient parking could be achieved. Similarly, there is no detailed information to suggest that the traffic from a development of up to 4 dwellings would be detrimental to the surrounding road network.
23. My attention has been drawn to appeal cases with regard to previously developed land¹. This matter was not determinative in this appeal and those sites were not located in the AAP. Therefore, they are materially different to the scheme before me.

Appropriate Assessment

24. The appeal site falls within the core sustenance zone of the Wye Valley and Forest of Dean Bat Site Special Area of Conservation (SAC) and the Westbury Brook Ironstone Mine Site of Special Scientific Interest (SSSI). The notified features connected to the sites are lesser horseshoe bats and greater horseshoe bats.
25. It is not possible to rule out likely significant effects on the protected sites through the potential impact from lighting at the site on the commuting behaviour of bats. In these circumstances, the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) require that an Appropriate Assessment (AA) is carried out. The Habitats Regulations also indicate that permission may only be granted after having ascertained that a scheme will not affect the integrity of the European site. I may give

¹ APP/P1615/W/19/3233576 and APP/P1615/W/19/3233023

consideration to any conditions or other restrictions which could secure mitigation and so provide certainty that the proposal would not adversely affect the integrity of the site.

26. The Council carried out its own AA during the application. The application was accompanied by an Ecological Assessment, updated prior to determination, and evidence from the Cinderford Northern Quarter bat surveys were also relied upon. Natural England were consulted and raised no objections to the AA.
27. As well as the details above, I have sought further evidence on this matter. The information before me indicates that the impact of the development could be mitigated by imposing a lighting strategy condition. This would avoid adverse effects on the integrity of the Wye Valley and Forest of Dean Bat SAC and SSSI.

Conditions

28. I have considered the conditions put forward by the Council against the requirements of the national Planning Practice Guidance and the Framework. Where necessary and in the interests of clarity and precision, I have altered the conditions to better reflect the relevant guidance.
29. I have attached conditions relating to the submission of reserved matters and the time limits associated with this and commencement of the development. A condition referring to the location plan is included for clarity.
30. To ensure appropriate drainage is provided there is a condition requiring a foul and surface water scheme to be submitted and agreed. Given the activities said to have taken place at the site, conditions are imposed requiring details of potential contamination at the site to protect living conditions of existing and future occupiers. A condition requiring levels details is required as this may have implications on landscape features and to protect the character and appearance of the area. It has not been shown these are necessary as part of the reserved matters submission. However, given they may relate to the early stages of the development, the details are required prior to its commencement.
31. A lighting strategy, Construction Ecological Management Plan and biodiversity enhancement conditions are required to prevent impacts on, and provide for, species and their habitats.
32. Conditions in relation to external materials along with parking and turning facilities are not imposed as these would relate to reserved matters.

Conclusion

33. I conclude that, for the reasons given above, and taking into account all other matters raised, subject to the conditions in the schedule below, the appeal should be allowed.

Stuart Willis

INSPECTOR

Schedule of conditions

- 1) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan Drawing No 1729.00A.
- 5) No development shall take place until full details of the finished levels, above ordnance datum, of the ground floors of the proposed buildings, in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.
- 6) No development shall take place until a scheme for full surface and foul water drainage, including a timetable for implementation, have been submitted to and agreed in writing by the local planning authority. The approved details shall be fully implemented prior to the occupation of any dwelling hereby approved and thereafter be maintained as approved.
- 7) No development shall commence until an assessment of the risks posed by any contamination shall have been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site. The assessment shall include: a survey of the extent, scale and nature of contamination; the potential risks to: human health; property (existing or proposed) including buildings, crops, livestock, pets, woodland and service lines and pipes; adjoining land; ground waters and surface waters; ecological systems; and archaeological sites and ancient monuments
- 8) No development shall take place where (following the risk assessment) land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out and upon completion a verification report by a suitably qualified

contaminated land practitioner shall be submitted to and approved in writing by the local planning authority before the development is occupied.

- 9) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.
- 10) No development shall take place until a monitoring and maintenance scheme to demonstrate the effectiveness of the proposed remediation shall have been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented, and the reports produced as a result, shall be submitted to the local planning authority within 14 days of the report being completed and approved in writing within 14 days of receipt. If any of these reports identifies any discrepancy with the verification report then a protocol, including timescale, for the necessary remediation shall be submitted to the local planning authority within a further 14 days and approved in writing within 14 days of receipt. Thereafter, any necessary remediation and verification shall be carried out in accordance with the approved protocol.
- 11) No development shall take place (including demolition, ground works, site clearance, vegetation clearance) until a Construction Ecological Management Plan (CEcMP) has been submitted to and approved in writing by the local planning authority. The CEcMP shall include, but not be limited to the following:
 - i. Risk assessment of potentially damaging construction activities,
 - ii. Identification of "biodiversity protection zones",
 - iii. Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements for bats and reptiles, amphibians and nesting birds.),
 - iv. The locations and timing of sensitive works to avoid harm to biodiversity features (e.g. daylight working hours only starting one hour after sunrise and ceasing one hour after sunset),
 - v. The times during construction when ecological or environmental specialists need to be present on site to oversee works,
 - vi. Responsible persons and lines of communication,
 - vii. The role and responsibilities on site of an ecological clerk of works (ECoW) or similar person,
 - viii. Use of protective fences, exclusion barriers and warning signs, and
 - ix. Ongoing monitoring, including compliance checks by a competent person(s) during construction and immediately post-completion of construction works.

The approved CEcMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

- 12) Prior to any above ground works a scheme for biodiversity enhancement, shall be submitted to and agreed in writing with the local planning authority. The scheme shall include, but not be limited to, the following details:
- i. Description, design or specification of the type of feature(s) or measure(s) to be undertaken,
 - ii. Materials and construction to ensure long lifespan of the feature/measure,
 - iii. A drawing(s) showing the location and where appropriate the elevation of the features or measures to be installed or undertaken,
 - iv. When the features or measures will be installed and made available, and
 - v. A timetable for their provision.

The approved details shall be implemented in accordance with the approved scheme and shall thereafter be retained and maintained for their designed purpose.

- 13) Prior to their use or installation, details of any internal and external lighting shall be submitted to and approved in writing by the local planning authority. The details shall clearly demonstrate that lighting will not cause excessive light pollution or disturb or prevent bat species using key corridors, forage habitat features or accessing roost sites. The details shall include, but not be limited to, the following details:
- i. A drawing showing sensitive areas and/or dark corridor safeguarding areas,
 - ii. Description, design or specification of external lighting to be installed including shields, cowls or blinds where appropriate,
 - iii. Demonstrate their relationship to the landscaping scheme,
 - iv. A description of the luminosity of lights and their light colour,
 - v. A drawing(s) showing the location and where appropriate the elevation of the light fixings,
 - vi. Methods to control lighting control (e.g timer operation, passive infrared sensor (PIR)), and
 - vii. A timetable for their provision.

The lighting shall be installed in accordance with the approved details, and these shall be maintained thereafter in accordance with these details.