



Appeal Decision

Site visit made on 10 November 2020

by L Page BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th December 2020

Appeal Ref: APP/G1630/W/20/3257279

Walnut Farm, Tewkesbury Road, Norton GL2 9LH

- 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 Jacob Perry-Gardiner against the decision of Tewkesbury Borough Council.
 - The application Ref 19/00367/FUL, dated 23 April 2019, was refused by notice dated 26 February 2020.
 - The development proposed is the erection of 7 dwellings comprising of 2, 3, 4 and 5 bedroom accommodation (including 4 market and 3 affordable discounted market sale dwellings) and associated vehicular access.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 7 dwellings comprising of 2, 3, 4 and 5 bedroom accommodation (including 4 market and 3 affordable discounted market sale dwellings) and associated vehicular access at Walnut Farm, Tewkesbury Road, Norton GL2 9LH in accordance with the terms of the application, Ref 19/00367/FUL, dated 23 April 2019, and the plans submitted with it, subject to conditions in the attached Schedule.

Procedural Matters

2. The application date on the application forms appears to approximate the decision date on the decision notice, and therefore looks to be a clerical error. The application date of the 23 April 2019 on the appeal forms marries with the application date on the decision notice. This is the date I have used for the purposes of the banner heading. Similarly, the description of development on the application forms appears to have been superseded by the appeal forms and decision notice and amended to include associated vehicular access. I have dealt with the appeal accordingly.
3. The Unilateral Undertaking submitted by the appellant has secured planning obligations relating to affordable housing, transport and refuse bins. Tewkesbury Borough Council has confirmed that these planning obligations overcome reasons for refusal 4 and 5, the matters of which are no longer contested. Gloucestershire County Council, within representations made pursuant to the original application, acknowledge the acceptability of such planning obligations to the amount put forward. Furthermore, they did not take the opportunity to provide representations under the appeal, and consequently it is reasonable to conclude that they have no objection to the planning obligation on this basis.

4. Notwithstanding, I have proceeded to assess the planning obligations in accordance with the tests set out in the National Planning Policy Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010.

Main Issues

5. The main issues are:

- (a) whether the proposal is in a suitable location for housing relative to the settlement strategy for the area;
- (b) the effect on the character and appearance of the area; and
- (c) whether planning obligations relating to affordable housing and sustainable transport are necessary and any benefits therein.

Reasons

Location

6. The site is located on land at Walnut Farm, accessed off of the A38 near the settlement of Norton. It sits adjacent to another site which has been granted planning permission¹ that during the time of my site visit was in the process of being constructed.
7. Policy SP2 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2017 (JCS) controls the distribution of development in the area. Under the policy, the proposal is not within a rural service centre or service village and is subject to Policy SD10 of the JCS, which applies to residential development in other rural areas. Under Policy H1 of the Down Hatherley, Norton and Twigworth Neighbourhood Plan 2019 (NDP) proposals outside defined settlement boundaries are allowed as exceptions under policies in the JCS and in particular, Policy SD10 of the JCS.
8. Accordingly, Part ii of Policy SD10 of the JCS allows development where it would comprise infilling within existing built up areas of towns and villages. For the purposes of the policy, infill development means development of an under developed plot well related to existing built development.
9. There is clearly a precedent for ribbon style development along the A38 in the vicinity of the site, as demonstrated by the appellant's submitted drawing² which has not been disputed by the Council. This level of development has been allowed, with some of it subsequently coming forward in accordance with the JCS. This has seemingly changed the character of this particular stretch of the A38, creating ribbon development that appears to form a built up arterial route linking Norton in the north and Twigworth in the south.
10. Even if some of this development has historically come forward under a different development plan, the fact remains that it still exists and shapes the context within which the proposal in this case is assessed.
11. The site's position amongst this ribbon development, along with its general proximity to Norton as a service village, means it is well located within a built up area. Furthermore, the proposal would find itself directly adjacent to newly constructed development immediately to the north, and existing development immediately to the south.

¹ 18/00073/FUL

² PL19-290-02

12. In this context, there are no provisions within Policy SD10 of the JCS to say that the site would have to be within the settlement boundary to be within the built up area, which is consistent with an inspector's findings under another appeal³ in the immediate area.
13. Therefore, given the site's close relationship with and position between development, it would seem reasonable that the proposal should be regarded as being within a built-up area, even if it is outside of the defined settlement boundary of Norton. Altogether, the proposal would comply with infill policy requirements⁴ under Part ii of Policy SD10 of the JCS.
14. Consequently, in accordance with Policy SD10 and SP2 of the JCS, the proposal also meets the criteria under Policy H1 of the NDP. This is logical insofar as neighbourhood plans should be consistent with local plans. Policy RES4 in the emerging local plan puts forward a competing definition of infill development and built-up area. However, the emerging local plan is yet to be examined and its contents are subject to change. This is because its contents have not been determined as sound, and it therefore carries limited weight under this appeal.
15. For the reasons stated above the proposal would comply with Policy SP2 and SD10 of the JCS and Policy H1 of the NDP, which among other things seeks to secure appropriate infill development within a built-up area pursuant to meeting demand for new housing.

Character and Appearance

16. Drawing parallels with my earlier assessment of the site's location, it is clear that although the site is technically outside of any defined settlement boundary, its position on the ground amongst other forms of linear ribbon development along the A38 shapes the context within which the site should be assessed. Accordingly, the site presents itself adjacent to other built form and as a contiguous part of the existing pattern of development. Therefore, it is not isolated within the wider countryside and despite the open fields further east and west its immediate setting does not exhibit a strictly rural character. There are sufficient levels of built form in reasonably close proximity to the site in order to anchor it in a suburban context.
17. Even though developments along the A38 may have come forward under a different development plan, the fact is that they currently exist and establish the context within which the site should be interpreted, and proposal assessed. This is in essence what the appeal decision sets out⁵ in that the inspector assessed the site's physical context, consistent with the approach in this case.
18. The site itself presents as an unkempt field parcel adjacent to a construction site where the land has been partly developed. There is a significant extent of mature hedgerow along the site frontage that screens it when views are taken from the east. Consequently, open views of the countryside are not currently available, and the field does not present itself as a gap in this context. The proposal would introduce seven new dwellings at the site, that would tie into the built form to the north and south and would be consistent with the wider pattern of ribbon development along the A38.

³ APP/G1630/W/20/3246922

⁴ Consistent with APP/G1630/W/17/3184561

⁵ APP/G1630/W/20/3246922

19. Dwellings would come forward with proportionate sized plots that would not extend beyond the rear building lines of the adjacent built form and therefore would not encroach on the countryside to the west.
20. The hedgerow fronting the site would be retained, and therefore notwithstanding that the proposal would come forward in the context of adjacent built form, it would be largely screened from view along the A38 frontage. This would markedly reduce the visual impact of the proposal. Furthermore, as the site is already enclosed by a substantial hedgerow, delivering development on the site would not erode any pre-existing open views through the site.
21. The new dwellings would share the appearance of neighbouring development currently being constructed in the north, comprising a similar height and scale whilst including timber cladding to maintain a consistent vernacular in line with Paragraph 130 of the Framework and pursuant to the farmstead aesthetic brought forward by that development. Consequently, even though both developments have come forward at different times, they would read as having a coherent relationship within the wider landscape and the proposal in and of itself would not present as piecemeal development.
22. It is acknowledged that the NDP may encourage farmstead cluster layouts. However, the existing mature hedgerow would mitigate the appearance of linear development along the roadside frontage. Furthermore, the proposal's consistent vernacular with the existing cluster in the north means it would not appear as an isolated linear form of development, but a coherent and interesting part of the wider whole.
23. The ribbon development along this particular stretch of the A38 has already been established, to the extent that the rural character and appearance has already been significantly eroded. Allowing further development along this corridor would not change the suburbanised character or appearance of the area in this context. This would not undermine the policy position of the NDP, which would continue to protect other areas of a rural character and appearance from ribbon development.
24. Clearly there would be a fundamental change in the nature of the site, as there will be development delivered on land where there currently is none. However, given the prevailing context this change would not be harmful to the character and appearance of the area. Consequently, the proposal would accord with policies SD4, SD6, SD10 and E2 of the JCS and Policy H1 of the NDP. Among other things, these seek to ensure that development comes forward in consideration of the landscape and visual sensitivity of the area in which they are to be located or which they may affect.

Planning Obligations

25. The proposal is supported by an executed Unilateral Undertaking (UU) submitted by the appellant. The UU has been considered against the three tests set out in the Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010. An affordable housing planning obligation is necessary pursuant to Policy SD12 of the JCS to ensure 40% of housing on the site is delivered as affordable.

26. Furthermore, the proposal would place additional pressure on refuse services and monitoring activities resultant from the development, and the provision of financial contributions are necessary in accordance with Policy INF7 of the JCS to ensure infrastructure and services required as a consequence of development can be delivered.
27. A highways planning obligation for bus stop infrastructure is necessary pursuant to Policy INF1 of the JCS to ensure there is adequate provision for future occupiers to access sustainable transport options. The calculated sum appears to be based on Gloucestershire County Council's professional expertise in delivering infrastructure, and there is no evidence from the appellant or otherwise that it would be excessive. Consequently, and altogether, the UU would directly relate to the development; fairly and reasonably in scale and kind.

Planning Balance

28. In considering the main issues it has been found that the proposal would accord with the policies of the JCS and NDP and therefore complies with the development plan as a whole. The Council cannot currently demonstrate a five year housing land supply, even when taking the best case scenario, which still amounts to a substantial shortfall⁶. Consequently, there is a shortfall in housing land supply which triggers Paragraph 11 d) ii and Footnote 7 of the National Planning Policy Framework. As there are no adverse impacts identified under the main issues, the benefits associated with the delivery of additional housing to meet supply, in conjunction with affordable housing and sustainable transport planning obligations, means the benefits of the proposal would stand alone in the balance. Consequently, there is a presumption in favour of sustainable development in accordance with Paragraph 11 d) ii. Paragraph 14 of the Framework would not be engaged on the basis that the NDP does not contain direct policies and allocations that relate to the provision of new housing in Norton in accordance with Paragraph 14 b).

Conditions

29. The Council suggested 18 conditions, and these were all considered against the Framework and Planning Practice Guidance. Conditions were subject to minor amendments in the interests of consistency, clarity and running order. Some conditions were removed to avoid duplicating planning obligations, whilst others were removed to ensure the Schedule complied with the Framework when imposing conditions that remove permitted development rights. All the conditions set out in the attached Schedule are considered necessary to make the development acceptable in planning terms.
30. The standard conditions setting out the time limits, and securing compliance with the approved plans, are necessary to provide certainty. Conditions requiring samples of building materials and details of joinery are necessary to ensure that the proposal comes forward in a manner consistent with emerging development adjacent. A condition requiring a drainage management plan is necessary to ensure that the development is suitably drained for its lifetime and to ensure to adverse effects on the water environment. A condition requiring a comprehensive scheme of hard and soft landscaping is necessary pursuant to the details not currently provided on the existing plan.

⁶ Statement of Common Ground

31. Such as a detailed schedule of existing and proposed plant species, among other things. A condition requiring landscape implementation, maintenance and replacement is required to ensure landscaping measures are established and remain effective pursuant to safeguarding the appearance of the site.
32. A condition requiring noise mitigation for the proposal is necessary to ensure the living conditions of future occupiers are not adversely affected by noise emitted from the A38 adjacent. Conditions requiring the implementation of visibility splays, parking, turning and highway management is necessary to ensure that highway safety is maintained once the proposal has been occupied and in perpetuity. A condition securing construction management activities is necessary to protect highway safety and the efficient delivery of goods and materials. Conditions requiring details and implementation of bus and pedestrian infrastructure are necessary to promote sustainable means of travel for future occupants at the site, in conjunction with the submitted planning obligation which secures the financial measures for these improvements.
33. Conditions restricting permitted development rights should only be applied in exceptional circumstances and where there is a clear justification to do so⁷. There appears no clear justification in this case and I have not attached conditions restricting permitted development rights on this basis.
34. The PPG is clear that pre-commencement conditions should only be used where clearly justified, likely meaning requirements of the condition are fundamental to the development permitted and it would otherwise be necessary to refuse permission. It is necessary to secure drainage details before construction to ensure there are no adverse effects on the water environment that might be generated by the imposition of hard surfaces during construction. It is necessary to require finished floor levels before construction to ensure that appropriate site levels can be achieved before the existing site levels are changed. It is necessary to secure ecological mitigation and enhancement measures before construction to ensure that any ecological assets that might otherwise be affected during construction are appropriately preserved.
35. In accordance with the procedural requirements set out in the Town and Country Planning (Pre-commencement Conditions) Regulations 2018 (as amended), pursuant to Paragraph 3 (b), the appellant has provided a substantive response, confirming that they are happy with the pre-commencement conditions and underpinning reasons provided by the Council in the event they were attached under the appeal.

Conclusion

36. I have found the proposal accords with the development plan as a whole and benefits from a presumption in favour of sustainable development in accordance with Paragraph 11 d) ii of the Framework. The appeal is therefore allowed, and planning permission is granted in accordance with conditions in the attached Schedule.

Liam Page

INSPECTOR

⁷ Paragraph 53 of the Framework

Schedule of Conditions

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission
- 2) Except where otherwise stipulated by conditions attached to this permission the development hereby permitted shall be carried out in accordance with the following approved plans:
 - a. PL19-290-14 Rev B (Affordable Housing Plan)
received 2nd January 2020
 - b. PL19-290-03A Proposed Floor Plans and Elevations Plot 1
received 7th August 2019
 - c. PL19-290-04A Proposed Floor Plans and Elevations Plot 2
received 7th August 2019
 - d. PL19-290-05A Proposed Floor Plans and Elevations Plot 3
received 7th August 2019
 - e. PL19-290-06A Proposed Floor Plans and Elevations Plot 4
received 7th August 2019
 - f. PL19-290-07A Proposed Floor Plans and Elevations Plot 5
received 7th August 2019
 - g. PL19-290-08A Proposed Floor Plans and Elevations Plot 6
received 7th August 2019
 - h. PL19-290-09A Proposed Floor Plans and Elevations Plot 7
received 7th August 2019
 - i. PL19-290-11A Proposed Garage Plans and Elevations – Plot 1, 2 & 3
received 7th August 2019
 - j. PL19-290-12A Proposed Garage Plans and Elevations – Plot 4, & 5
received 7th August 2019
 - k. PL19-290-14B Proposed Site Plan showing Hard and Soft Landscaping
received 7th August 2019
 - l. PL19-290-17B Proposed Street Scene Elevations
received 7th August 2020
 - m. PL19-290-19B Proposed Site Access Visibility
received 7th August 2020
 - n. PL19-290-20A Ecology Constraints Plan
received 7th August 2020
 - o. PL19-290-15 Key Materials Schedule Sheet 1 of 2
received 5th April 2019
 - p. PL19-290-16 Key Materials Schedule Sheet 2 of 2
received 5th April 2019
- 3) Before the commencement of development hereby permitted an ecological mitigation and enhancement scheme shall be submitted to and approved in writing by the local planning authority. The scheme shall include an implementation timetable. The works shall thereafter be carried out in accordance with the approved details and timetable.

- 4) Before the commencement of development hereby permitted details of existing and proposed levels, to include details of finished floor levels relative to ordnance datum, have been submitted to and approved by the local planning authority. All development shall be carried out in accordance with the approved details.
- 5) Before the commencement of development hereby permitted a detailed design, maintenance & management strategy and timetable of implementation for the surface water drainage strategy (e.g. Sustainable Drainage System – SuDS) presented in the Drainage Statement dated October 2019 prepared by Rider Planning received 24th October 2019, and foul water strategy, shall be submitted to and approved in writing by the local planning authority. The detail must demonstrate the technical feasibility/viability of the drainage system through the use of SuDS to manage the flood risk to the site and elsewhere and the measures taken to manage the water quality for the lifetime of the development. The scheme for the surface water drainage shall be carried out in accordance with the approved details before the development is first put in to use/occupied.
- 6) No development shall be brought in to use/occupied until a SuDS 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, has been submitted to and approved in writing by the local planning authority. The approved SUDS maintenance plan shall be implemented in full in accordance with the agreed terms and conditions.
- 7) Building operations shall not be commenced until samples of the roofing and walling materials proposed to be used have been submitted to and approved by the local planning authority and all materials used shall conform to the samples so approved.
- 8) No development above damp course level shall take place until details of the proposed external joinery of the windows, rooflights and doors and shutters, at a minimum scale of 1:5 with moulding profiles at full size, including elevations and sections, have been approved in writing by the local planning authority and the fitted joinery shall be in accordance with the approved drawings
- 9) No development above damp course level shall take place until there has been submitted to and approved by the local planning authority in writing, a comprehensive scheme of hard and soft landscaping, including boundary fencing and hard surfacing materials, which shall include indications of all existing trees (including spread and species) and hedgerows on the land and details of any to be retained together with measures for their protection during the course of development.
- 10) All planting, seeding or turfing in the approved details of landscaping shall be carried out in the first planting and seeding season following the occupation of the building(s) or completion of the development, whichever is the sooner, and any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

- 11) No dwelling hereby permitted shall be occupied until a scheme to protect the proposed development from traffic noise from the A38 has been implemented in accordance with details which shall first be submitted to and approved in writing by the local planning authority. The scheme shall ensure that the indoor ambient noise levels in living rooms and bedrooms and external amenity areas meet the standards in BS 8233:2014 for the appropriate time period. The development shall be carried out in strict accordance with the details so approved.
- 12) The vehicular access hereby permitted shall not be brought into use until the existing roadside frontage boundaries have been set back to provide visibility splays extending from a point 2.4m back along the centre of the access measured from the public road carriageway edge (the X point) to a point on the nearer carriageway edge of the public road 160m distant in both directions (the Y points). 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.
- 13) The buildings hereby permitted shall not be occupied until the vehicular parking and turning facilities have been provided in accordance with the submitted plan drawing no. PL19-290-14B, and those facilities shall be maintained available for those purposes thereafter.
- 14) Prior to occupation of the proposed development hereby permitted details of the proposed arrangements for future management and maintenance of the proposed streets within the development shall be submitted to and approved in writing by the local planning authority. The streets shall thereafter be maintained in accordance with the approved management and maintenance details until such time as either a dedication agreement has been entered into or a private management and maintenance company has been established.
- 15) The development hereby permitted shall not be occupied until details of pedestrian crossing improvements south of the site access have been submitted to and approved in writing by the local planning authority, implemented thereafter and maintained for the duration of the development.
- 16) The development hereby permitted shall not be occupied until details of bus shelter provision either side of the carriageway south of the site access have been submitted to and approved in writing by the local planning authority, implemented thereafter and maintained for the duration of the development.
- 17) Throughout the construction period of the development hereby permitted provision shall be within the site that is sufficient to accommodate the likely demand generated for the following: i. parking of vehicles of site operatives and visitors; ii. loading and unloading of plant and materials; iii. storage of plant and materials used in constructing the development; iv. provide for wheel washing facilities.

End of Schedule