



Appeal Decision

Hearing Held on 10 and 11 November 2020

Site visit made on 13 November 2020

by H Porter BA(Hons) MSc Dip IHBC

an Inspector appointed by the Secretary of State

Decision date: 8th December 2020

Appeal Ref: APP/G1630/W/20/3246937

Land at Swinley Field, Maisemore, Gloucester GL2 8HD

- 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 Chamberlayne Farms Limited against the decision of Tewkesbury Borough Council.
 - The application Ref 18/01202/OUT, dated 22 November 2018, was refused by notice dated 20 August 2019.
 - The development proposed is outline application for up to 25 dwellings (consisting of 15 self-build and 10 discounted market houses) together with access and associated works such as footpath links to village hall and play area (all matters reserved).
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Decision

1. The appeal is dismissed.

Preliminary and procedural matters

2. The planning application was made in outline form with all matters reserved for future consideration. I have treated the appeal on this basis. Prior to the Virtual Hearing (VH), I was able to see the appeal site from public land. After the VH closed, with the landowner's consent, I undertook a site visit on an access-required basis. The main parties were made aware of these visits and raised no objection to this approach.
3. The development plan for the area comprises the saved policies from the Tewkesbury Borough Local Plan to 2011, March 2006 (saved TBLP); the Gloucestershire Waste Core Strategy, November 2012 (WCS); and the Cheltenham and Tewkesbury Joint Core Strategy, November 2017 (JCS). The emerging Tewkesbury Borough Plan (TBP) is yet to be examined and the JCS Review is at a very early stage. Owing their unresolved nature and the current stage in their preparation, the TBP and JCS Review policies carry limited and very limited weight respectively. No Neighbourhood Plan covering Maisemore has been made.
4. The main parties have submitted a signed legal agreement, dated 20 November 2020, prepared under S106 of the Town and Country Planning Act, 1990 (the S106), which includes obligations relating to the delivery of proposed affordable homes, public open space, financial contributions towards play equipment, public rights of way, and refuse and recycling, in the event that planning permission is granted. The S106 is a material consideration to which I return later in the decision. At the VH, the Council confirmed it would not be

pursuing its refusal reasons 5, 6 and 7, which related to waste and site preparation, affordable housing, the delivery of public open space, and recycling and waste bin provision.

Main Issues

5. The main issues in this appeal are:
- Whether the appeal site offers a suitable location for the proposed development having regard to the policies of the development plan;
 - the effect of the proposal on the landscape character and appearance of the area; and,
 - the effect on the significance or special interest of relevant Grade II* listed buildings.

Reasons

6. The appeal site comprises an L-shaped parcel of agricultural land just off Church Road on the northern periphery of Maisemore. Maisemore is a small village in a largely rural area some three miles from the City of Gloucester. JCS Policy SP2 identifies Maisemore as one of a number of 'Service Villages' that are envisaged to accommodate lower levels of development, to be allocated through the Tewkesbury Borough Plan and Neighbourhood Plans proportional to their size and function, reflecting their proximity and accessibility to Cheltenham and Gloucester, and taking into account the environmental, economic and social impacts including existing levels of growth. The Service Villages are envisaged as accommodating around 880 new homes; in the remainder of the rural area, Policy SD10 will apply to residential development.
7. Although being promoted for housing through the emerging TBP, the appeal site has not been allocated for development. In circumstances where sites are not allocated, Policy JCS Policy SD10 sets out that housing will be permitted, amongst other things, where it is infilling within villages.
8. There is no defined settlement boundary for Maisemore, the existing built-up area of which is most readily defined by the regular concentration of development that either fronts the principal linear route through the village, or the lanes and cul-de-sacs off it. Church Road extends northwards from the A417, where, from the village hall and beyond the Church Rise cul-de-sac, there is a noticeable absence of development. Indeed, beyond the boundaries associated with residential gardens, playing fields and the village hall, the appeal site marks the point at which the settlement has transitioned into its tangibly rural context. This leads me to the view that, although the appeal site is close to Maisemore's settlement edge, it lies beyond the built-up area of the village.
9. In light of the above, the proposal would not be within the Service Village of Maisemore for the purposes of SP2. The appeal site is not within the village and so would not be infilling within Maisemore, nor would it satisfy any of the criteria JCS Policy SD10 that would otherwise allow dwellings on sites that have not been allocated for development. Rather, the appeal site is situated in the open countryside. The appeal scheme has not been predicated on satisfying any other exceptions that might otherwise allow development in the countryside. Concluding on the first main issue, the appeal site does not offer a suitable location for the proposed development, which runs contrary to the

settlement hierarchy and strategy policies of the development plan, notably JCS Policies SP2 and SD10.

Landscape character and appearance

10. Maisemore village is characterised by a traditional linear pattern of development that, like many historic villages, thins out towards its edges into the surrounding countryside. Moving northwards along the tree-lined route of Church Road, the built envelope of the village transitions into the bucolic rolling landscape. Beyond the watercourse that runs east/west along the northern boundary of the appeal site are a public footpath, open, cultivated fields, and a cluster of historic development at Maisemore Court and the Church of St Giles, which are within the designated Landscape Protection Zone (LPZ)¹. Owing to the physical and visual break that separates these features from the core of the village, they are afforded a sense of rurality that is an important characteristic that defines Maisemore's countryside setting and this part of the LPZ.
11. The appeal site is a sloping arable field bound to the immediate south and west by the village hall, recreational areas and the rear or side boundaries of residential garden plots. As the appeal site descends northwards, it becomes increasingly distinguished by its open and verdant nature, giving views over the wider, characteristically rural landscape. Therefore, notwithstanding the relative proximity of land and buildings that are part of Maisemore's settlement edge, the appeal site assimilates with the character and appearance of the countryside. Furthermore, forming part of a substantial physical and visual break that separates the core of the village from an enclave of historic development at the top of Church Road, the appeal site contributes to a sense of openness and rural isolation that is of value to this grouping of heritage assets, the setting of the village and the LPZ.
12. For the purposes of the Landscape and Visual Sensitivity Study (LVSS²), appeal site falls within Land Assessment Parcel Mai-04; the land on the northern side of the stream is within Land Assessment Parcel Mai-03. My observations of the appeal site and its surroundings correspond with the local landscape assessment of the LVSS, wherein the stream, the line of trees along Church Road, and undulating arable landscape are identified as notable features, that, amongst other things, influence a sense of remoteness from the village. I agree.
13. The application documents include various iterations of a draft site layout plan. While the proposed layout plan is illustrative only, it does show how up to 25 dwellings could be accommodated and an access provided off Church Road. To some degree, the proposed development would be seen against the backdrop of the settlement. Through the reserved matters, it could be ensured that the detailed design of dwellings would fit with the local area, that the views from the village hall towards the north were not wholly obstructed, and that supplementary landscaping would assist in softening or assimilating the development to some degree. Even so, the scheme would unquestionably form an urban intrusion onto the site, resulting in a harmful extension of the physical built envelope of the settlement into open countryside.
14. Indeed, the indicative layout shows that the proposal would involve the total loss of the agricultural land. In combination with the extent of housing,

¹ As defined in the Tewkesbury Local Plan, 2006

² Rural Service Centres and Service Villages Landscape and Visual Sensitivity Study, 2014

- associated driveways and parking, the rural character of the site would be radically altered and become more like a suburban cul-de-sac. Even with supplementary planting, biodiversity enhancements, and the provision of open space on part of the site, the scheme would advance development that would be at odds with the informal, open, agricultural nature of the existing use.
15. The appellant proposes a landscaped 'buffer' along the stream; however, the proposal would still severely diminish the openness and sense of space along the stream corridor. Currently, vehicular access is shown using a break in the line of lime trees, rounding into the field opposite the appeal site and crossing the stream. The details of the access could be modified, although it seems inevitable that a vehicular access would introduce a route through the avenue of limes, introduce hard urban forms and activity to the detriment of the sensitive visually prominent part of the local landscape.
 16. It may be possible to lessen the impact on open views from the north of the village hall. However, even if planting and tree canopy cover did obscure visibility of the development to some extent, there would nevertheless be a substantial erosion of the physical and visual break that distinguishes the settlement edge from its open countryside setting. In turn, the sense of openness and rural isolation that is of value to the grouping of heritage assets would be weakened. All of this would be to the detriment of the character and appearance of the local landscape, the rural setting of the village and the LPZ.
 17. I therefore find the proposed development would result in significant harm to the landscape character and appearance of the area. Conflict therefore arises with JCS Policies SD4, SD6, SD8 and SD10 as well as TBLP Policy LND3 insofar as they require that all residential development achieves the maximum density compatible with, amongst other things, the character and quality of the local environment; responds positively to and respects the character of the site and its surroundings; makes a positive contribution to local character and distinctiveness, having regard to valued and distinctive elements of the historic environment; protects landscape character for its own intrinsic beauty; avoids detrimental effects on types, patterns and features that make a significant contribution to the character, history and setting of a settlement; and seeks to protect or enhance the environment where possible, retaining and where appropriate enhancing, important landscape features within the LPZ.

Designated Heritage Assets

18. The Church of St Giles and Maisemore Court are both Grade II* listed buildings in recognition of their special architectural or historic interest. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act, 1990 (the Act), I have paid special regard to the desirability of preserving these listed buildings, their settings, or any features of special architectural or historic interest they may possess.
19. The Church of St Giles (list entry number: 1171533) (the Church) is situated on higher ground at the top of Church Road a little to the northeast of the appeal site. The statutory list description identifies the building as being first listed in 1955, of 15th century origin, with later alterations, constructed of coursed, square lias with ashlar dressings.
20. In addition to its historic fabric, architectural execution and historic associations, the special interest and significance of the Church are informed in part by its role and function as a visual and social landmark, manifest in the

dominance of its square tower. To this day, the Church is experienced as detached and separated from the main body of the settlement by undeveloped agricultural land, which contributes to a sense of rural remoteness. Whether or not a deliberate design choice, and irrespective of what other structures may have existed closer to it, the physical separation of the Church from the main part of Maisemore is, in my judgement, of importance in understanding its origins as a rural parish place of worship.

21. The Grade II* listed building known as Maisemore Court, Old Court, New Court (Maisemore Court) (list entry number: 1091377) was first listed in 1986 and is identified as a former manor house, now farmhouse and two attached houses; of early 17th century origin, enlarged and altered in the late 18th century for W. Pitt. Based on what I have read, Maisemore Court is of considerable architectural and historic interest, not least owing to its surviving historic architectural features and alterations that reveal the building's evolution. In addition, the building's significance and special interest are informed by the relationship with the group of former agricultural buildings, now functioning as a business centre, that were historically part of its farmstead complex.
22. As with the Church, Maisemore Court and its associated former farmstead buildings are experienced as being separate from the village and having a predominantly rural setting. Indeed, owing to its elevated position and the verdant, undeveloped lands around it, the high status and former function of Maisemore Court as a manor, and later farmhouse, can still be readily discerned. Furthermore, as I saw from within its garden, Maisemore Court to this day commands views across agricultural land to towards the village, which distinguish it as being distinctly separate from the main area of Maisemore and within a rural setting.
23. The appeal site is an important component of the undeveloped rural landscape context surrounding both the Church and Maisemore Court. Whilst the village has inevitably changed over time, the appeal site has enduringly contributed to the physical and visual detachment that informs the rural surroundings of the Church and Maisemore Court. Thus, the appeal site certainly comprises a part of the setting of both and is of value to their individual significance and special interest.
24. There would be some intervening vegetal screening; the channelled view along Church Road would remain; as would some degree of physical separation and detachment from the village core. Nevertheless, the proposal would give rise to a suburban form of development on the appeal site and an associated encroachment of built form within the rural setting of the Grade II* listed Church and Maisemore Court. The permanent change within the setting of the listed buildings would irreversibly dilute the sense of rural isolation that underpins the significance and special interest of both. It follows that the proposed development would fail to preserve the setting of the listed buildings, causing harm to their significance and special interest.
25. Failing to preserve the setting of the Grade II* listed buildings runs counter to the statutory provisions of Section 66(1) of the Act. Conflict also arises with JCS Policies SD8, SD10, insofar as they seek to ensure that designated heritage assets and their settings will be conserved and enhanced. In both instances, the degree of harm to the setting and significance of designated heritage assets would be less than substantial. Paragraph 196 of the Framework advises that where a development proposal will lead to less than

substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal.

Other considerations, public benefits and planning balance

26. I consider the S106 Agreement and planning obligations promoted by the appellant would be directly related to the development, be reasonably related in scale and kind, and necessary to make the development acceptable in planning terms. As such, I consider that it would satisfy the relevant tests set out in Regulation 122(2) of the Community Infrastructure Regulations 2010.
27. Even if Schedule 2B of the S106 were the primary source of Affordable Housing, the proposal would contribute to the provision of 10 units at 25% of the open market sales value. Although the mix and tenure proposed under Schedule 2B would not offer the range of social rent to affordable home ownership that is the Council's preference, the development would nevertheless offer 40% affordable housing, while the remainder of the dwellings would be secured as self-build housing.
28. Although the precise extent of the shortfall is not agreed, it is not in dispute that there is currently a deficit in the supply of housing land in the Borough, as well as a proven and unmet need for affordable homes. Furthermore, the Government is actively seeking to increase the supply of self-build housing, whilst the evidence put to me casts doubt over whether the demand for self-build housing in the authority's area is being met. In light of the shortfall in housing land, irrespective of the degree of that shortfall, the delivery of new housing the proposal would provide attracts more weight in its favour. Therefore, I consider the delivery of affordable and open market homes, which would contribute to creating mixed and balanced communities in the Borough, to be social, and public, benefits that carry significant weight in favour of the proposed development.
29. The identification of Maisemore as a Service Village indicates there are some, albeit limited, services and facilities therein, which would be in reasonably convenient walking or cycling distance from the appeal site. There would be social and economic benefits associated with supporting local services, residents feeding into the local economy and economic benefits associated with the construction phase. However, given the limited range of services in Maisemore is limited and the lack of compelling evidence that any would be under threat in the absence of the proposal, I attribute limited weight to this being a public benefit of the scheme. There would be upgrades to the footway along Church Road, albeit only up to the village hall land, this also carries limited weight as a public benefits of the scheme. The provision of open space, contributions to play equipment, bins and public rights of way would largely be as mitigation. However, there would be benefits to ecology along the stream corridor, which carries moderate weight. In my judgement no harm would arise in relation to living conditions, flood risk, drainage or highway safety. However, these are not public benefits and neutral in the overall planning balance.
30. Paragraph 193 of the Framework states that, when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to less than substantial harm to its significance. Although the degree of harm to the significance of the Church and Maisemore Court, would, in each case, be less than substantial, this should not be equated

- with a less than substantial planning objection, particularly when the statutory requirements to preserve listed buildings and their settings have not been met.
31. Taking into consideration the importance of the highly graded heritage assets, very great negative weight is given to the less than substantial harm the proposal would cause to each. The benefits already outlined above are all public benefits, the collective weight of which would be significant. Even so, in the overall balance, the public benefits do not outweigh the considerable importance and weight ascribed to the desirability of preserving listed buildings or their settings. This indicates conflict with paragraph 196 of the Framework.
32. Framework paragraph 11d) applies where there are no relevant policies in the development plan, or the policies which are most important for determining the application area out-of-date. In such circumstances, the tilted balance should apply, unless the application of policies in the Framework that protect assets of particular importance provides a clear reason for refusing the development proposed³. Bearing in mind the harm I have found in relation to the setting of two Grade II* listed buildings, applying the policies in the Framework that seek to conserve and enhance the historic environment provides a clear reason for refusing the proposed development. Therefore, even if I were to conclude there is a shortfall in the five-year housing land supply on the scale suggested by the appellant, the tilted balance does not apply.
33. The proposed development would cause serious harm to the landscape character and appearance of the area, would fail to preserve the setting of listed buildings causing harm to their significance, and would not be in a suitable location in respect of development plan policies. I have found there would be conflict with JCS Policies SP2, SD4, SD6, SD8, SD10 and TBLP Policy LND3. Although I note there is some local support for the proposal and the appellant's long-standing connection to Maisemore, I do not find there to be other material considerations to justify making a decision other than in accordance with the development plan read as a whole.
34. For the reasons set out above, and having considered all other matters raised, I conclude that the appeal should be dismissed.

H Porter

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Jack Smyth (Counsel)
Peter Tuffnell DipTP MRTPI (Agent)
Luke Chamberlayne (Appellant)
Ian Smith BSc DipTP MRTPI IHBC (Heritage Consultant)
Alan Steele (AGS Consultants)
David Ferraby (DF Legal)

³ National Planning Policy Framework paragraphs 11 d) i.

FOR THE LOCAL PLANNING AUTHORITY:

Paul Smith BA(Hons) MRTPI
Julian Bagg BSc(Hons) PGCert(Urban Design) IHBC (Conservation Officer)
John Bryant
Gary Spencer

INTERESTED PERSONS:

David Jones (Maisemore Parish Council)
Anna Macey-Michael
Mark Wardle
Mike Cogger
Jeanette Phillips

DOCUMENTS SUBMITTED AT OR AFTER THE HEARING

- 1 TBC Maisemore CIL Compliance Statement
- 2 TBC Waste Bins Compliance Statement amended
- 3 TBC Maisemore Commuted sum schedule of rates
- 2 Signed S106 Agreement, dated 20 November 2020