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## Appeal Decision

Site visit made on 5 January 2021

**by A A Phillips BA(Hons) DipTP MTP MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 15 February 2021**

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**Appeal Ref: APP/F1610/W/20/3252225**

**Hazelton, Fosseway, Bourton-On-The-Water GL54 2LE**

- 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 Mrs Valerie Warrington against the decision of Cotswold District Council.
  - The application Ref 19/01155/FUL, dated 15 March 2019, was refused by notice dated 4 March 2020.
  - The development proposed is to provide tourist and visitor accommodation in a rural setting whilst providing an exemplar of sustainable and ecological living and a construction which will be traditional and authentic including the demolition of the existing Nissen Hut on the site and the construction of 2 Lodges consisting of 4 separate accommodation units within each Lodge.
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This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 15 January 2021.

### Decision

1. The appeal is dismissed.

### Preliminary Matter

2. The development is located on a scheduled ancient monument which is a designated heritage asset and is, by definition, of national importance. Even though the Ancient Monuments and Archaeological Areas Act 1979 (AMAA Act) does not impose a statutory duty equivalent to sections 66(1) or 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 the national importance of scheduled ancient monuments is a relevant consideration.

### Main Issues

3. The main issues are:
  - i. whether the principle of the proposed development is acceptable;
  - ii. the effect on the character and appearance of the Cotswolds Area of Outstanding Natural Beauty and in particular Whiteshoots Hill; and
  - iii. the effect on the Bourton Bridge Roman Settlement Scheduled Ancient Monument.

### Reasons

#### *Site and Surroundings*

4. The appeal site is a sloping grassed paddock area situated to the north of a timber residential property known as Hazelton. The site is situated between two main roads; Fosseway and Old Gloucester Road, which converge to the north of the site. A residential property and disused garage and its associated access and hardstanding areas are situated immediately to the north east of the appeal site, between the junction of the two roads. To the south and south west of the appeal site, following the alignment of the two main roads, are residential properties of various architectural styles and periods. Beyond the roads, to the east and west of the appeal site is open countryside.
5. Access into the site is via a relatively new vehicular access point off Old Gloucester Road and also via the access which currently serves Hazelton. In approximately the centre of the site is a former Nissen Hut which I understand benefits from a certificate of lawfulness for commercial and industrial uses. I also noted at my site visit that to the immediate south of the site are various outbuildings which appears to be associated with the adjacent residential property, Hazelton.
6. The site is surrounded on three sides by mature trees and hedging along both road frontages and along the boundary with the residential property to the north east. The boundary with Hazelton is open.
7. The proposal is to demolish the existing building and to erect two buildings, which the appellant describes as an upper lodge and lower lodge, both of which would contain four self-catering holiday units, each having three en suite bedrooms and an open living space with kitchen and lounge and dining area. The buildings would have natural stone external walls with artificial Cotswold stone slate roof and painted timber windows. The buildings would be partly dug into the sloping ground in order to reduce their visual effect on the surroundings. Vehicular access would be off Old Gloucester Road and a total of 15 car parking spaces would be provided.

#### *Principle*

8. Policy EC11 of the Cotswold District Council Local Plan 2011-2031 (Adopted 3 August 2018) (the LP) relates to Tourist Accommodation and with reference to self-catering accommodation states that proposals will only be permitted where it is provided through the conservation and conversion of existing buildings or is appropriately located within Development Boundaries. Exceptionally, proposals for new build self-catering units that are directly associated on-site with a tourist attraction and required to sustain the viability of the tourist attraction, will be acceptable.
9. The proposal does not involve the conservation and conversion of an existing building, nor is it situated within designated Development Boundaries. Neither is there evidence that the development would be directly associated with a tourist attraction. Therefore, the proposal is in conflict with Policy EC11 of the LP.
10. The appellant argues that the development plan policies are caveated with the comment that planning applications will be determined in accordance with the relevant policies unless other material considerations indicate otherwise – this accords with legislative requirements. As such the appellant contends that a balancing exercise must be undertaken. To this end, she identifies a number of

other relevant policies within the LP which should be taken into account when considering wider material considerations. I discuss these briefly, below.

11. Policy EC10 of the LP relates to the provision of tourist facilities and visitor attractions where the accompanying notes identify a weakness in the current tourist economy with reference to the lack of facilities which should be addressed by encouraging such facilities. Furthermore, Policies EC1 and EC3 relate to economic development and employment generating uses, encouraging economic development where it maintains the vitality of the rural economy and supporting improvements to the vitality and viability of key district local centres, such as Bourton-On-The-Water. The appellant argues that her business will be viable and achieve high occupancy rates and will create local employment.
12. The National Planning Policy Framework (the Framework) also supports development which benefits the rural economy, stating that decisions should enable the development of sustainable rural tourism and leisure developments which respect the countryside and are accessible to local services. The appellant argues that her proposal will accord with those objectives.
13. Although I understand that the proposal would contribute to addressing some weaknesses in the tourist economy and may make a positive contribute to local economic prosperity, it is clear to me that there is conflict with the most relevant policy in the development plan, which specifically relates to tourist accommodation and restricts sporadic new build development in the countryside. I appreciate that there is a balance to be struck in terms of economic benefits and the protection of the countryside, and to that end it is my opinion that Policy EC11 is specifically worded to achieve that balance. Therefore, even taking account of other development plan policies and material considerations, the principle of the proposed development is unacceptable having regard to the development plan as a whole.

#### *Character and appearance*

14. The appeal site is situated within the Cotswolds Area of Outstanding Natural Beauty (AONB) where, in accordance with the Framework I attach great weight to conserving the landscape and scenic beauty which has the highest status of protection in relation to these matters. Policy EN5 of the LP relates specifically to the AONB and reflects guidance provided in the Framework, stating that the conservation and enhancement of the natural beauty of the landscape, its character and special qualities will be given great weight in determining development proposals. Policy EN4 is a more general policy which relates to the wider natural and historic landscape, stating, among other objectives, that development will be permitted where it does not have a significant detrimental impact on the natural and historic landscape of the Cotswold District.
15. The expansion of valley settlements, such as Bourton-On-The-Water is identified as a force for change on the Landscape Strategy and Guidelines of the Cotswolds Character Assessment. Landscape implications of new development are identified as the erosion of the rural character of valleys and the landscape setting of historic villages and the expansion of valley settlements onto highly visible sides and the development or rural sprawl.
16. The appeal site is an area of rising land between two busy roads and, as previously set out, there is built development to the north east and south west.

The site forms an intrinsic part of the open countryside and therefore should be protected for its character and beauty as part of the rolling countryside. Boundaries of the site with the roads are formed by rows of mature deciduous trees which form some screening of the site. However, I noted at my site visit that the relatively open and green character of the site is clearly visible from public views between the trees and from the main access into the site off Old Gloucester Road. Although there is built development in the locality and the site is situated between two main roads, it plays an important role in providing a green space buffer between existing development and preventing the continuous built development of land between the convergence of Fosseway and Old Gloucester Road and built development on Whiteshoots Hill. The existing relatively open space formed by the appeal site contributes in a positive way to the rural character of this part of the AONB.

17. The current proposal for a significant amount of built development. Along with other features such as extensive hardstanding areas, it would result in the loss of the informal rural character and erode the role of the site and its positive contribution to the AONB, failing to conserve and enhance the natural beauty of the landscape, and its special qualities.
18. In order to meet the requirements of LP Policies EN1 and EN2, the appellant has sought to minimise the height of the development and build a linear form of structures which, along with the arrangement of fenestration and materials, seek to reflect traditional Cotswold buildings. However, the development requires extensive alterations to land levels, meaning that the development does not respond sensitively or sympathetically to the topography of the site and in particular the natural sloping character of the green field. As such, although taken on its own the design of the development is not unacceptable, the proposal would significantly change the character and appearance of the site with consequent negative effects to the wider designated landscape. Overall, the design is not of sufficient high quality to outweigh the harm to the AONB I have identified. In coming to my conclusions on this issue I have taken account of the range of evidence submitted by the appellant, including the Landscape and Visual Appraisal by Connected Landscapes dated January 2019.
19. Therefore, on this issue I conclude that the proposal would have a harmful effect on the on the character and appearance of the Cotswolds Area of Outstanding Natural Beauty and in particular Whiteshoots Hill. As such it conflicts with Policies EN1, EN2, EN4 and EN5 of the LP and advice contained in the Framework.

### *Heritage*

20. The appeal site is situated within the designated Bourton Bridge Roman Settlement Scheduled Ancient Monument (SAM) which is a designated heritage asset. Archaeological evidence before me show that there are surviving archaeological remains of various levels of significance across the appeal site, including Roman remains which indicate the presence of small buildings. To the north of the site there are some open small fields bounded by ditches with more limited evidence of structures. The significance of the SAM is derived from this archaeological evidence. Furthermore, the evidence of Roman remains suggest there were scattered properties close to Fosseway. The existing character of the area is individual properties set within their gardens which front onto Fosseway and, consequently, the way the SAM is experienced

today is similar to that in the Roman period with low density built development close to the main road.

21. Policy EN10 of the LP relates specifically to designated heritage assets and states that great weight will be given to the asset's conservation and the more important the asset, the greater the weight should be. Development proposals that sustain and enhance the character appearance and significance of assets and that put them to a viable use consistent with their conservation, will be permitted. The Policy is quite clear that proposals that would harm the significance of a designated heritage asset or its setting will not be permitted, unless a clear and convincing justification of public benefit can be demonstrated to outweigh that harm. The approach established by the LP is consistent with advice in the Framework.
22. The appellant argues that the appeal site comprises less than 1% of the total area of the SAM and is at the periphery of the scheduled area. Cotswold Archaeology, on behalf of the appellant, has submitted a detailed heritage assessment of the proposal and state that following extensive geophysical and archaeological evaluation the only evidence is of agricultural use of the land in the Roman period which provides some historical context for the Roman Town. It is stated that the remains are not of a high standard of survival diversity and rarity and do not warrant preservation in situ. The assessment concludes that the development will have a less than significant impact.
23. With reference to the setting of the SAM the assessment concludes that Fosseway area and River Windrush are the above ground surviving components of the Roman landscape. The appellant's assessment states that the site formerly comprised part of a roadside field system to the south of the Roman town, but makes no specific contribution to the significance of the SAM and as such no adverse cumulative effect has been identified by the appellant.
24. The appellant's overall conclusion is that the proposal would involve the removal of archaeological remains, but those are of limited heritage significance and their loss would cause less than substantial harm. Furthermore, the assessment of the setting of the SAM concludes that the Roman town and landscape are scarcely intelligible at ground level and the site does not make any meaningful contribution to the SAM. Further study by Red River Archaeology covers specific matters relating to mitigation with particular reference to foundations, drainage and contract management.
25. The SAM designation of the archaeological remains is clearly based on their association with a Roman Settlement and they provide evidence of how the settlement developed and how land at the periphery of the town was used. These remains are considered to be of national importance because of their potential to provide evidence about the Roman settlement, including its development and decline, the people who lived there and the work they did. I have also noted that the evidence is that the soil above the archaeological remains is very shallow and some archaeological deposits are known to be just below the level of the existing topsoil. This means that the archaeological remains on the site would be easily damaged or destroyed by the groundworks required to implement the proposed development.
26. The design of the foundations involves stripping 100mm of topsoil and placing an engineered geo-grid on top of the remaining land. This would provide some protection over the archaeological remains above which the foundations for the

proposed buildings and hard surfacing would be constructed. Piles would be inserted into the ground under the proposed buildings in order to support the foundations and there is concern that the piles would have a harmful impact on any surviving archaeological remains under the proposed lodges, removing a small amount of those remains. Although it may be argued that those remains may not be of the highest significance or density, they are still part of the SAM and should be assessed as such.

27. Furthermore, in my opinion the development would alter the setting of the SAM by developing on the existing area of open space. Such a change would be harmful to the significance of the ancient monument as the land in question has been open since the Roman period. The development of this field would terminate the historic use of the land as subsistence land associated with both the Roman settlement and modern day Bourton-On-The-Water.
28. The Archaeological Assessment dated September 2019 seeks to demonstrate that the impacts of the construction of the development can be mitigated by much of the development being built above the level of archaeological interest and by monitoring the construction phase. However, the development requires the insertion of a total of 136 piles which have a diameter of 200mm each into the level of archaeological interest. It is highly likely that such intrusive works would result in the destruction of archaeological remains over this part of the SAM. Furthermore, additional ground works will be required to demolish the existing building on the appeal site, create the extensive area of hardstanding, drainage, services and landscaping. Although the Archaeological Impact Assessment argues that ground intrusions would be limited to 100mm or less below the surface, even such intrusion may potentially damage the archaeological remains.
29. Accordingly, the proposal would cause material harm to the special interest of the SAM. It would fail to accord with the expectations of paragraph 193 of the Framework which anticipates great weight being given to the conservation of designated heritage assets. For the same reasons the proposal would also conflict with Policy EN10 of the LP.
30. Paragraph 194 of the Framework states that any harm to, or loss of, the significance of a designated heritage asset should require clear and convincing justification. I find the harm to be less than substantial in this instance, but it should be remembered, however, that less than substantial harm does not equate to less than substantial planning objection, especially when the statutory tests have not been met.
31. Under such circumstances, paragraph 196 of the Framework advises that this harm should be weighed against the public benefits of the proposal. The proposal would generate some income for the local economy, contribute to the provision of visitor accommodation and generate some full and part time employment opportunities. I must weigh those benefits against the harm arising from the proposal. In this particular case the proposal would result in significant intrusive interventions in the SAM resulting from the piling operations, stripping topsoil, new hard surfacing areas and the erection of two new buildings which would on their own have a harmful effect on the open and green character of the site which makes a positive contribution to the historic significance of the SAM. Therefore, the benefits do not outweigh the harm to the designated heritage asset I have identified.

### **Conclusion**

32. For the above reasons and having regard to other matters I conclude that the proposal conflicts with the development plan as a whole and the appeal should be dismissed.

*A A Phillips*

INSPECTOR