
Appeal Decision

Site visit made on 16 March 2021

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 April 2021

Appeal Ref: APP/D3125/W/20/3264356

Cotswolds Hotel and Spa, Road from Chipping Norton to Oxford Road, Southcombe, Chipping Norton OX7 5QH

- 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 Glucka Wijesuriya of Cotswolds Hotel & Spa against the decision of West Oxfordshire District Council.
 - The application Ref 19/03504/OUT, dated 18 December 2019, was refused by notice dated 3 June 2020.
 - The development proposed is described as 'Outline planning permission with all matters except access reserved for the development of a holiday village with 73 holiday homes (Class C3), landscaping and associated infrastructure, and other ancillary development at Cotswolds Hotel and Spa'.
-

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr Glucka Wijesuriya of Cotswolds Hotel and Spa against West Oxfordshire District Council. This application is the subject of a separate Decision.

Procedural Matters

3. In my heading above I have taken the description of development from that used in the appeal form rather than the planning application form as the evidence¹ indicates that the appellant revised it during the course of the application.
4. The application is made in outline with access to be considered in detail. Therefore, appearance, layout, scale and landscaping are reserved for separate consideration. As such, the proposed site plan, landscape master plan and illustrative drawings are submitted on an indicative basis and I have considered there may be alternative ways of developing the site. Nevertheless, in relation to some matters the appellant refers to the illustrative material. I have specified in my decision those areas where I have given the illustrative plans particular consideration.
5. The appellant has submitted a Flood Risk Assessment and Conceptual Drainage Strategy Addendum² dated 23rd October 2020 and updated Landscape

¹ Letter dated 6 February 2020

² RPS, dated 23rd October 2020, Appendix 9c Appellant's Appeal Statement

Masterplan³. These show the proposed utilisation of attenuation ponds instead of geocellular crates to provide surface water attenuation with the latter also showing greater illustrative detail including a dog walking trail and planting mixes. The changes reflect discussions the appellant has undertaken to resolve areas of disagreement with the Council following the decision. They also cover areas that, in the event of an outline approval, would be subject to subsequent reserved matters applications regarding layout and landscaping. On that basis, they do not make fundamental changes to the nature of the outline proposal and therefore, I am satisfied that no one would be prejudiced by my taking them into account as part of my determination.

6. The Council's decision notice includes five reasons for refusal. These include reasons relating to harm caused to biodiversity, the Chipping Norton Air Quality Management Area and drainage and floodrisk. The Council has indicated that they are generally satisfied⁴ that their concerns in relation to these matters have been adequately addressed. However, the Berkshire, Buckinghamshire and Oxfordshire Wildlife Trust (BBOWT) continue to raise concerns regarding the potential impact on the Glyme Valley Site of Special Scientific Interest (SSSI) notwithstanding the additional information provided by the appellant. Consequently, whilst refusal reasons 3-4 and parts of refusal reason 2 fall away, the impact of the proposal on the SSSI remains as a main issue in my determination.
7. The final refusal reason refers to the absence of a completed legal agreement to secure the provision of Travel Plan monitoring and Public Art. The appellant has provided a signed Unilateral Undertaking (UU) dated 10 March 2021 to provide these obligations. The appellant also subsequently forwarded revised wording for an alternative UU⁵ to provide similar obligations. However, although signed, this was not dated. As the later document expressly indicates that the provisions in the deed shall be of no effect until dated, it does not appear to be a completed deed. Therefore, I have taken the previously completed deed dated 10 March 2021 into account as part of my determination. Consequently, the fifth reason for refusal also falls away and I shall refer to the UU later in this decision.

Main Issues

8. The main issues are:

- The effect of the proposal on the character and appearance of the area.
- Whether the appeal site provides a suitable location for the development having regard to local and national planning policies, and;
- The effect of the proposal on the Glyme Valley SSSI.

Reasons

Character and appearance

9. The site lies within the Enstone Uplands character area in Figure 8a of the West Oxfordshire Local Plan 2031, September 2018 (LP) and the West Oxfordshire

³ Prepared by ClewsLA Drawing No. 18_058_D202, Appendix 7e, Appellant's Appeal Statement

⁴ Paragraphs 3.31 and 3.32 of the Council's Appeal Statement

⁵ Received in email dated 8.4.21

Landscape Assessment, 1998 (WOLA). This is described in the WOLA as a rolling landform with a distinctively elevated and open character. Notwithstanding the presence of the golf course, most of the land near to the appeal site comprises fields and hedgerows with pockets of woodland. Limited built form is seen in sporadic clusters, and there is a loose grouping of buildings at Southcombe near to the road junction of the A44 and A3400, which includes the Cotswolds Hotel and Spa buildings. Overall, the area has a spacious open and attractive countryside character that permits expansive views.

10. The appeal site lies east of the main golf course and behind the Cotswolds Hotel and Spa buildings. The sub-category character areas mapped in the WOLA show that it comprises 'open limestone wolds' with the golf course adjacent shown as sports landscape. Although planning permission⁶ for a floodlit golf driving range was commenced at the site, the development was not taken forward. My observations were that the northern section has undergone partial grading of the land and there were notable vehicular tracks evident. At the time of my visit I saw some mounding of soil, piles of building materials, construction vehicles and siting of storage containers in this part of the site. The south of the site is grassland which falls southwards. Taken together, despite some degrading of the land form, the overall impression was one of a large open field with some boundary planting and an absence of built form. Accordingly, the appeal site possesses characteristics that contribute positively to landscape character, chief amongst those is its spaciousness.
11. Although layout and landscaping are reserved, and there may be other ways of developing the site, the submitted Landscape Visual Impact Assessment (LVIA)⁷ refers to the landscape masterplan. I have therefore, given considerable weight to the illustrative material in my assessment as a realistic representation of the proposal. It shows 73 holiday homes arranged around courtyards or as individual lodges in the northern portion of the site, with the southern portion kept as a wildflower meadow and copse plantation.
12. The proposal would introduce a significant amount of built form onto land that is largely devoid of structures. The presence of the buildings and access roads, associated lighting, activity and vehicles would dramatically change and diminish the open character of the northern part of the land. This is illustrated in the Masterplan Design Proposals overhead views provided in the Design and Access Statement.
13. Furthermore, the amount of development would markedly extend the presence of buildings at Southcombe south-eastwards encroaching further into the countryside. The resultant scale of development would be harmfully and inappropriately disproportionate relative to the modest loose cluster of built form near the road junction at Southcombe.
14. In addition, the LVIA indicates that there would be a moderate negative impact on some close range and more distant viewpoint locations to the south and east⁸. This would exacerbate the degree of harm. Notwithstanding that the indicative planting proposed would reduce the impact on views from the public

⁶ Reference 12/0156/P/FP

⁷ Prepared by Clewsia, Ref 18_158_LVIA, dated April 2019

⁸ Viewpoints A, D, E, G, H and J, LVIA

footpath on the south-eastern boundary, such planting would still take a considerable time to become established.

15. The landscape masterplan proposes belts of planting on southern and eastern parts of the land and includes a broadly central green corridor. Whilst this would provide some screening and softening to the presence of the proposed and existing buildings, given the significant scale of the overall development, it would be unlikely to fully shield its presence nor the associated lighting and activity within the landscape. The use of sensitive materials, planting and measures to limit light spillage within the development would not entirely surmount its disproportionate scale. Taken in combination, the factors identified would significantly reduce the spaciousness of the land to the detriment of the rural character and appearance of the area.
16. Based on the appellants comments it seems doubtful that the flood lit driving range permission would be fully implemented⁹. Nevertheless, it is a possibility that I have considered. The approved buildings¹⁰ in that development are not of a similar magnitude to the development before me and it would retain most of the site as open land. By comparison, the proposal would result in greater harm to the character and appearance of the area.
17. My attention is also drawn to development¹¹ permitted that included 20 self catering apartments at the hotel, referred to by the appellant as 'Phase 1', which I saw during my visit. He contends that the proposal would follow the courtyard arrangement and materials that the Council found acceptable in that instance and therefore, would be a logical complement to it. However, I cannot agree that the single courtyard arrangement proximate to the main hotel building sets a template for multiple additional courtyard arrangements reminiscent of a campus style development shown on the illustrative plans.
18. In support of the proposal the appellant points to recent residential development at Parkers Circus on the edge of Chipping Norton. He considers that by comparison the proposal would be in a parkland setting and less urbanised. Be that as it may, Parkers Circus is located on the edge of the town and therefore, responds to that markedly different context. Hence, the comparison is not particularly relevant and carries little weight in favour of the proposal.
19. Given the harm identified, it follows that the proposal would conflict with paragraph 170b) of the National Planning Policy Framework (the Framework) which stipulates that planning decisions should contribute to and enhance the natural and local environment by, amongst other things, recognising the intrinsic character and beauty of the countryside.
20. Accordingly, I find that the proposal would be harmful to the character and appearance of the area contrary to policy EH2 of the LP which requires new development to conserve and, where possible, enhance the intrinsic character and quality of the local landscape. In addition, it would conflict with policy OS2 of the LP which, amongst other matters, sets out general principles for all development including that it should be of a proportionate and appropriate scale to its context having regard to the potential cumulative impact of

⁹ Paragraph 2.11, Response to LPA Statement and 3rd Party Representations dated 9.3.21

¹⁰ Appendix 3a, Council's Appeal Statement

¹¹ Planning reference 17/01758/FUL

development, and that it should form a logical complement to the existing scale and pattern of development.

Location

21. Policy OS2 of the LP is described as a cross cutting policy which sets out an overall strategy for the location of development in the district. It generally seeks to direct development to the main service centres, rural service centres and villages. There is no dispute between the parties that as the appeal site lies outside of those settlements, for the purposes of the LP, it constitutes open countryside.
22. Policy OS2 further stipulates that development in the open countryside will be limited to that which requires and is appropriate for a rural location and which respects the intrinsic character of the area. It goes on to make a distinction between residential and non-residential development. The proposal is described as class C3 which constitutes residential dwelling houses. However, the proposal comprises tourist accommodation as part of a wider leisure development at the hotel, spa and golf club rather than primary residential accommodation.
23. Moreover, it would be possible to restrict the occupation of the proposed dwelling units to the use proposed by the imposition of a planning condition. Hence, although the proposal does not neatly fit into the distinction made in policy OS2, in these circumstances it would be reasonable to consider the criteria applied to non-residential development. This includes a criterion which states that proposals that support the effectiveness of existing businesses and sustainable tourism may be considered appropriate subject to the general principles also set out in the policy.
24. Policy E4 of the LP is broadly supportive of tourism and leisure development but sets out a sequential approach whereby new tourist facilities should be located within or close to service centres and villages and reuse appropriate existing buildings wherever possible. Development in the open countryside may be justified in specified circumstances. This includes where there is a functional linkage with a particular countryside attraction. The supporting text explains that the location, scale and design of any new visitor related development must be appropriate to the area and its environmental impact will be carefully assessed and weighed against any economic and community benefits.
25. Policy CN2 of the LP sets out the Chipping Norton Sub-Area Strategy. Whilst it does not expressly mention tourism development, it aligns with policy OS2 in reinforcing that the focus of new housing, supporting facilities and additional employment opportunities will be in Chipping Norton. New development in the rest of the sub-area will be limited to meeting local community and business needs and will be steered towards the larger villages.
26. Taken together, these policies are broadly consistent with national policies in the Framework which seek to build a strong, competitive economy. Paragraph 83c) is particularly relevant to the proposal in stipulating that planning decisions should enable sustainable rural tourism and leisure developments which respect the character of the countryside.
27. Therefore, the local and national policies that support rural tourism development are not without qualification. It is evident from the cross cutting

general principles in policy OS2, the explanation for policy E4 and paragraph 83c) of the Framework that the impact upon the character of the countryside is an important and relevant consideration. Consequently, there is some overlap with the first main issue. It will be seen that, primarily due to its disproportionate scale, I found that the development would be harmful to the character and appearance of the countryside. It follows that the proposal would conflict with the development plan and Framework policies for rural tourism on this basis.

28. The appellant relies upon a Business Plan submitted with the previous planning application reference 17/01758/FUL. The two page document is appended to a strategic site masterplan dated January 2017 and consists of a list of assumptions and an 11 year business profit and loss projection for the Chipping Norton Golf Club and Hotel. The model used for the business plan is based on 20 self-catering holiday apartments, a swimming pool/gym facility and 60 lodges which the appellant refers to as phases 1 and 2 respectively. He contends that the Council endorsed phase 2 of the business plan when they granted permission for phase 1. The appeal proposal represents phase 2. He further refers to pre-application advice¹² for the appeal proposal, which he states the Council did not oppose in principle.
29. Decision reference 17/01758/FUL granted full planning permission for the swimming pool, gym, spa facilities and 20 self-catering apartments. In finding that proposal compliant with the development policies then in force, the planning assessment section of the Council's delegated report generally acknowledges that the development would assist in supporting the golf club that had been struggling financially. However, it does not indicate that significant weight was attributed to the business plan, nor does it signal support for 'phase 2'. Instead, weight was attributed to the overspill accommodation that could be provided by the self-catering apartments to support the existing hotel and the '*relatively small scale*'¹³ of the proposal. Consequently, it is not shown that it conferred an express endorsement of a wider development. Additionally, I do not construe the brief, non-committal response to the pre-application request as amounting to positive support for the scheme before me.
30. Therefore, notwithstanding informal discussions that may have taken place, the appellant's strategic site masterplan has not been approved as part of a formal decision nor does it have the status of a development plan document. Furthermore, the business plan contains limited information and was prepared a considerable time ago. Consequently, it has not been updated to take account of recent changes to the economy, including the impact of the Covid 19 pandemic referred to by the appellant. Therefore, it does not rigorously demonstrate that the proposal before me is essential to secure the future financial viability of the golf facility, or in any event, that it is the only way it may be secured. Taking these points together, it attracts limited weight and would not outweigh the conflict with the policies for tourism development.
31. Moreover, whilst there might be a functional link with the existing hotel, spa and golf club facilities in that future occupants of the proposed tourist accommodation would be likely to use them, the business plan indicates that the income derived from the 60 lodges would be considerably more than that

¹² Dated 6 September 2018

¹³ Paragraph 5.9

derived directly from the golf course. On that basis, the scale of development would not so much support the effectiveness of the existing business, as dominate it. This reinforces my concern that the proposal before me, which is even larger than the model referred to in the business plan, would fail to be of a proportionate and appropriate scale to its context as required by policy OS2 of the LP.

32. The appellant suggests that the proposal would fulfil the sequential requirements of policy E4 as there is a footway to Chipping Norton. However, the town is some distance away, which combined with the nature of the generally unlit footway adjacent to a busy road would not be conducive to encouraging travel by foot. There is little information to otherwise show that the location of the appeal site would allow a genuine choice of travel mode other than by car.
33. Accordingly, I find that the proposal would not provide a suitable location for the scale of development proposed having regard to local and national planning policies. Therefore, it would be contrary to policies OS2, E4 and CN2 of the LP.

Glyme Valley SSSI

34. The SSSI is a nationally designated site of importance for biodiversity partly because it contains habitat that has largely escaped agricultural improvement. It lies relatively close to the appeal site and the public right of way along the southern boundary leads to it. Given the proximate relationship and access, it is reasonable to suppose that future occupants of the proposed holiday homes would potentially visit the SSSI for recreational purposes and dog-walking. The intensification of such activities would be likely to cause trampling damage, littering, dog fouling and disturbance to breeding birds. My view on this is reinforced by the concerns of the BBOWT¹⁴, which given their expertise attracts considerable weight.
35. In addition, the latest condition assessments¹⁵ indicated that the majority of the SSSI was in an unfavourable, recovering condition. Although the surveys were undertaken some time ago and appropriate management measures would have been likely to improve the situation, the evidence before me does not demonstrate that this has occurred. It follows that the condition of the SSSI could be particularly vulnerable to an increase in activity.
36. Furthermore, I have doubts whether the estimate¹⁶ of visitors leaving the appeal site by foot would accurately reflect the likely number as the calculations have been based on TRICs transport data for cycle movements at holiday parks, with an assumed pedestrian trip equivalent. This assessment is based on average numbers and the basis for the assumption is not fully explained. Future visitors to the appeal site would likely to be drawn to the attractive rural setting. Given that their stay would be recreational, even if they were to use the golf and spa facilities, it is also likely that they would seek to explore the surrounding wider countryside including for longer walks. Whilst on-site green space may reduce off-site activity to a degree, it would not be of a scale that would entirely prevent such activity. Even if the mitigation

¹⁴ Letter dated 23.2.21

¹⁵ Table 2.1, RPS SSSI Impact Assessment Report, May 2020

¹⁶ Paragraph 4.1.9 and Table 4.1 Assessment of potential visitors leaving the site by foot per day, RPS SSSI Impact Assessment Report, May 2020

measures outlined to discourage the use of the footpath to the south were implemented, some visitors would still be likely to visit the SSSI.

37. Moreover, I have not seen any views from Natural England on this matter following the additional information provided by the appellant. Taking these factors together, there is a risk of an adverse effect on the integrity of the SSSI. This is particularly so if the cumulative impact arising from the strategic housing development planned for the area is also taken into account. Paragraph 175b) of the Framework states that development likely to have an adverse effect on an SSSI, either individually or in combination with other developments should not normally be permitted.
38. Although the BBOWT also raise concerns regarding the risk of additional water flows to the SSSI, they accept that they are unable to assess the issue fully. The drainage strategy information provided indicates that the level of water flowing from the site would be no greater than at greenfield run-off rates and I have not seen substantive evidence to suggest this would be harmful to the SSSI.
39. My attention is drawn to the proposed tree planting and creation of other habitat at the appeal site shown on the landscape masterplan. This would assist in improving biodiversity at the site. Nevertheless, this does not outweigh nor address the harm that would result to the SSSI.
40. Overall, based on the information before me, I am not assured that the proposal would avoid an adverse effect on the Glyme Valley SSSI. Therefore, it would conflict with policy EH3 of the LP which stipulates, amongst other things, that the biodiversity of West Oxfordshire shall be protected by giving nationally important sites of special scientific interest the highest level of protection from any development that will have an adverse impact.

Planning Obligations

41. A signed legal agreement under section 106 of the Town and Country Planning Act 1990, dated 10 March 2021 has been submitted, the contents of which the Council broadly consider would meet its concerns in relation to refusal reason 5 on the decision notice¹⁷. It provides for a Public Art Statement to provide public art on the site as well as a public art contribution of £15,330 towards off-site artist-led participatory activity. This is a benefit of the proposal which I have taken into account in the overall planning balance. In addition, it would secure £1,240 for the County Council as a mitigation measure to monitor the travel plan for the site.

Other Matters

42. Reference is made to recent case law¹⁸ which recognised that Development Plan policies may pull in different directions and therefore, conflict with an individual policy would not automatically make a proposal contrary to the Development Plan when considered as a whole. However, unlike the circumstances of that case, I have found conflict with more than an individual policy in the development plan, including those for economic development. I also found conflict with the Framework. Nevertheless, I have had regard to this case law in my overall planning balance.

¹⁷ Email from Council 26.3.21

¹⁸ R (on the application of Corbett) vs Cornwall Council [2020] EWCA Civ 508

Planning balance and conclusion

43. Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise¹⁹.
44. Benefits would be likely to be generated from the proposal to the local economy from the construction and operation of the holiday village, creation and retention of jobs and the wider spending of future guests, although these are not quantified. To a degree, the proposal may also contribute towards the financial security of the appellant's other operations at the Cotswolds Hotel, Spa and golf course. Furthermore, the provision of public art on and off-site would be beneficial to those using the site as well as the wider community. I attribute moderate weight to the overall benefits arising from the proposal.
45. However, the proposal would conflict with policies in the development plan taken as a whole and significant weight is given to the conflicts with the development plan policies in relation to the overall strategy for tourism development, the harm to the character and appearance of the area and the protection of the SSSI.
46. The moderate weight given to the benefits of the proposal would not justify a decision other than in accordance with the development plan and Framework.
47. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

Helen O'Connor

Inspector

¹⁹ Section 38(6) Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.