
Appeal Decision

Site visit made on 20 July 2021

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 August 2021

Appeal Ref: APP/G1630/W/21/3271802

**The Old Orchard Land east of Badgeworth Manor, Badgeworth End,
Badgeworth, Cheltenham GL51 4UL**

- 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 and Mrs T Clink against the decision of Tewkesbury Borough Council.
 - The application Ref 20/00886/FUL, dated 18 September 2020, was refused by notice dated 25 January 2021.
 - The development proposed is the erection of a single detached dwellinghouse with associated parking and landscaping.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Since the Council made its decision, the emerging Tewkesbury Borough Plan 2011-2031 (TBP) has undergone Examination in Public, and the Inspector has issued his interim report. Once adopted, the TBP will replace the saved policies of the Tewkesbury Borough Local Plan, March 2006 (LP). However, no reference is made to the saved policies of the LP on the Council's decision notice. Instead, those cited relate to the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011-2031, December 2017 (JCS), which will remain part of the development plan. In these circumstances, the emerging TBP has a limited bearing on my determination. Nevertheless, I have referred to it where it has specific relevance.
3. The Government published its revised National Planning Policy Framework (the Framework) on 20 July 2021. The views of the parties were sought in relation to the bearing of the revised Framework on the case and I have taken those given into account as part of my determination.

Main Issues

4. The main issues are:
 - Whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies;
 - The effect on the openness of the Green Belt;

- Whether the site provides a suitable location for residential development having regard to local planning policies;
- The effect of the proposal on the character and appearance of the area having particular regard to the setting of Badgeworth Manor, a Grade II listed building.
- If inappropriate, would the harm by reason of inappropriateness, and any other harm, be clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the proposal.

Reasons

Whether inappropriate development

5. The Government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open as the essential characteristics of Green Belts are their openness and their permanence. Development within the Green Belt is inappropriate with the exceptions of the types of development listed in paragraphs 149 and 150 of the Framework. Policy SD5 of the JCS indicates that within the Green Belt, development will be restricted to those limited types of development permitted by the Framework.
6. Criterion (e) of paragraph 149 of the Framework allows for new buildings that constitute limited infilling in villages, and it is the appellants' view that the proposal is not inappropriate by virtue of this exception. This requires the consideration of whether the appeal site is within a village, and whether the proposal represents limited infilling. There is no definition of the term 'village' or 'infilling' in the Framework. Reference is made to caselaw that indicates that this is essentially a question of planning judgement¹ derived from an assessment of the situation on the ground and the pattern of the settlement. In the absence of any other definition, limited infilling would broadly suggest development of a modest gap between existing development, normally within a continuous built up frontage.
7. My approach in this is broadly consistent with those of the Inspectors in recent appeal decisions² to which my attention is drawn. However, based on the limited information before me regarding those cases and given that they related to different settlements, they are of limited relevance when exercising my judgement to the particular circumstances of this case. As such, I have given more weight to my observations of the specific characteristics of the appeal site and its surroundings.
8. There is no dispute between the parties that Badgeworth is a village. However, it is not a typical nucleated settlement in that it generally comprises two components situated on a north-east/south-west axis joined by Church Lane. The more tight-knit bulk of development lies towards the north-eastern end in contrast to the more historic component which is loosely configured around a green. The latter element includes the church and Badgeworth Manor. This

¹ R (Tate) v Northumberland County Council [2018] EWCA Civ 1519, Paragraph 9.18 Appellants' Statement of Response

² Appeal decision APP/A4710/W/19/3237366 (paragraph 3), Appendix D, Council's Statement of Case & Appeal decision APP/D1245/W/20/3255404, Appended to Appellants' Further comments dated 12.7.21

characteristic of Badgeworth is described by both Inspectors in relation to historic appeal decisions relating to the site³.

9. The appeal site lies to the east of Badgeworth Manor and forms part of its grounds. Although historically an orchard within a farmstead, it is now predominantly grassed land but with an established hedgerow along Church Lane. The proximity of fields in the intervening area between the main two components of the elongated village is also evident on the south eastern side of Church Lane. My observations were that the verdant appearance and absence of built form at the appeal site means that it has a strong rural character that has a greater affinity with the countryside rather than as part of the built-up area of the village.
10. There is an identifiable built-up frontage comprising a line of dwellings with a regular set back fronting Church Lane to the north east of the site. From my observations, this built-up frontage stops at The Old Vicarage. There would be a considerable distance between the proposed dwelling and The Old Vicarage. When this is combined with the presence of established vegetation and Norman's brook in the intervening space, as well as the proposed orientation of the dwelling, it would not read as a continuation of the linear form fronting Church Lane.
11. Neither, due to its position within the site and orientation, would it address the village green as Badgeworth Manor, Badgeworth End Cottage and the Cottage on the Green do. Whilst I note the presence of Woodlands to the north-west of the site, this appears more sporadic in character rather than establishing a clear building line. Hence, even if I were to accept the appellants' contention that the appeal site is within the village of Badgeworth, I cannot agree that the proposal would be infill development. It follows that the proposal would not fall within the scope of paragraph 149(e) of the Framework.
12. In reaching my view I have had regard to the differing conclusions of the Inspectors on the matter of infill development in the historic appeal decisions at the site, both of which were made a considerable time ago. Whilst my view is reinforced by the more recent decision made in 1990, given the limited information as to the nature of the proposals and the evolution of national and local policy as well as case law in the subsequent period, both assessments are of limited weight. Moreover, that undertaken in 1974 related to an outline proposal, unlike the proposal before me.
13. My attention is also drawn to a more recent appeal decision⁴ at a site in Dorset. My approach is generally consistent with the principles outlined by the Inspector in that case. However, given that this requires an assessment of the particular conditions on the ground, and that by their nature each site and settlement will be unique, it is not surprising that this may lead to different outcomes. The OS map excerpt provided shows that the site in that case did not lie between two components of the settlement as in this case. As such, it is not directly comparable with the specific facts of the case before me. Consequently, it is of limited weight.

³ Appeal decision T/APP/1990/A/74/1873/G9 dated 17.10.74 (paragraph 4), Appendix AB3 of Appellants' Statement of Response & T/APP/G1630/A/89/140336/P8 dated 24.4.90 (paragraph 5), Appendix AB5 of Appellants' Statement of Response & Appendix C of Council's Statement of Case.

⁴ Appeal reference APP/D1265/W/20/3255404, Appendix AB7, Appellants' Statement of Response

14. Accordingly, I find that the proposal would not constitute limited infilling in a village, and I have not seen evidence that it would fall within any of the other exceptions for the construction of new buildings listed in paragraph 149 of the Framework. Consequently, it would constitute inappropriate development in the Green Belt to which I must attach substantial weight.

Openness

15. Planning Practice Guidance (PPG) advises that openness is capable of having both spatial and visual aspects⁵. The appeal site comprises predominantly open grass land with established trees and hedgerows along the boundaries. Even taking into account the proposal to set the dwelling into the slope of the land, the volume of the proposal would amount to a sizeable detached dwelling. The combined presence of the building, associated domestic paraphernalia, hardstanding and vehicles at the site would markedly reduce the openness of the Green Belt. Moreover, given the strong rural character of the appeal site, the development would run counter to one of the five purposes of the Green Belt set out in paragraph 138 c) of the Framework. That is, to assist in safeguarding the countryside from encroachment.
16. In addition, notwithstanding that views of the development would to a certain extent be screened by the vegetation along the boundaries, some glimpses of it would still be possible from Church Lane and the elevated parts of the village green, especially when trees were not in full leaf. This would exacerbate the harm to the openness of the Green Belt.
17. Accordingly, the proposal would have an adverse spatial and visual impact on the openness of the Green Belt. However, given that it comprises one dwelling, the degree of harm would be moderate.

Location

18. Policy SP2 of the JCS sets out the overarching strategy for the distribution of new development across the joint core strategy areas. It broadly seeks to direct residential development to settlements at a scale commensurate with their position in the settlement hierarchy listed in Table SP2c of the JCS. Badgeworth village is not listed in the settlement hierarchy and does not have a designated settlement boundary. Therefore, for the purposes of the JCS it is a rural area. Policy SD10 of the JCS applies to proposals for residential development in such areas.
19. Policy SD10(4) restricts housing development in rural areas to four specified exceptions. This includes infilling within the existing built up areas of Tewkesbury Borough's towns and villages except where otherwise restricted by policies within district plans. The supporting text to the policy clarifies that infill development for this policy means the development of an under-developed plot well related to existing built development. The strategy in the JCS broadly accords with the approach to rural housing in paragraph 79 of the Framework which states that housing should be located where it will enhance or maintain the vitality of rural communities.
20. For similar reasons to those already mentioned, the appeal site would not be within the existing built up area of Badgeworth and due to its closer affinity with the nearby countryside, would not be well related to existing built

⁵ Paragraph:001 Reference ID:64-001-20190722

development. Hence, it would not constitute infilling within the meaning of policy SD10(4). Consequently, as it is not otherwise shown the proposal would fall within the exceptions for residential development permitted by policy SD10(4), the proposal would conflict with the overarching strategy for new development.

21. Both parties also refer to emerging policy RES4 of the TBP. Following examination, some modifications are required to the wording of policy RES4⁶. Moreover, it is not intended to replace policies SP2 or SD10 of the JCS. Overall, it attracts moderate weight in these circumstances. It refers to new housing at other rural settlements and sets out criteria whereby very small-scale residential development will be acceptable within and adjacent to the built up area of villages not otherwise in the settlement hierarchy. Support in principle is subject to the site not being in the Green Belt, unless the proposal would involve limited infilling in a village. I have already found that the proposal would not meet that definition. Therefore, no support is derived from this emerging policy.
22. Accordingly, I find that the proposal would not provide a suitable location for residential development having regard to local planning policies as it would conflict with the approach set out in policies SP2 and SD10 of the JCS.

Character and appearance

23. The appeal site lies to the east of Badgeworth Manor, a Grade II listed building and designated heritage asset. The heritage assessment and historic mapping evidence provided suggests that Badgeworth Manor has 16th century or earlier origins. Its role may have evolved over time with possible connections to a medieval religious house, connections to Badgeworth House (now Court) and farming. It is probably erroneously named as a Manor, as it appears to have been a farmstead for a good portion of its history. The historic maps show that the appeal site was its orchard for a considerable period until the 1970's. Over time the courtyard farmstead arrangement changed, and the buildings became fully residential.
24. Its significance is primarily derived from the aesthetic quality and architecture of the building which faces onto the green. In addition, the appeal site as the former orchard, is identified⁷ as one of the only surviving elements which evidence the former farmstead function. Furthermore, it contributes to the verdant surroundings in which Badgeworth Manor is experienced and enhances its setting. As such, the appeal site contributes positively to the heritage significance of Badgeworth Manor.
25. The proposed detached dwelling would introduce considerable built form, associated domestic garden and hardstanding into this setting and would diminish the historic rural landscape character of the land which the historic mapping shows has been largely free from built form. In addition, the domestic nature of the development would exacerbate the harm arising from the residential conversion of the former farmstead that has already occurred by further undermining the legibility and appreciation of this phase of its history.

⁶ MM9, Appendix A, Council's Statement of Case

⁷ Paragraph 5.39, Historic Environment Desk-Based Assessment, ref CR0452_1 prepared by Cotswold Archaeology, September 2020

26. Notwithstanding proposals to plant fruit trees, incorporate local materials and use the topography of the site to keep the height of the proposed dwelling lower than Badgeworth Manor, there would nevertheless be an adverse impact out of character with the rural and spacious appearance of the land.
27. I acknowledge that some screening would be provided by existing trees and hedgerows which would limit the prominence of the development from public vantage points. However, I am required to have special regard to the desirability of preserving listed buildings or their setting⁸, and this is not restricted to the impact on the public domain. PPG advises that the contribution that setting makes to the significance of a heritage asset does not depend on there being public rights of way or an ability to otherwise access or experience that setting⁹.
28. Moreover, whilst the proposed measures would to a degree limit the visual harm that would result to the setting of the listed building, they would not mitigate it entirely. Consequently, there would be residual, unacceptable harm to the surroundings within which the listed building is experienced. Given the relatively limited scale of the proposal, the resultant harm would be less than substantial, which is acknowledged by the appellants¹⁰.
29. Paragraph 202 of the Framework advises that in such circumstances the harm should be weighed against the public benefits of the proposal. The development would make more efficient use of the land and provide an additional house thereby contributing to overall housing supply in an area of unmet need. Furthermore, there would be economic benefits arising from the contributions and activities of future occupants which may support services and facilities within the rural area. However, as the development comprises a single dwelling, the degree of such benefits would be limited.
30. The appellants contend that the planting of additional native fruit trees within the grounds of the proposed dwelling would be a public benefit. Whilst this may be reminiscent of the historic orchard use, the number and position of trees indicated on the proposed site plan¹¹ would not suppress the prevailing domestic nature of the development. As such, they would not fully negate the harm arising from the proposal and would not amount to a public benefit. Reference is made to meeting the needs of the appellants to continue to live as part of the community. However, this would be primarily a private rather than public benefit.
31. Although less than substantial, mindful of the statutory duty and national policy¹², the harm to the significance of the designated heritage asset attracts great weight. Therefore, the limited public benefits identified would not outweigh the harm. Neither party suggests that the proposal would impact on the setting of other designated or non-designated heritage assets nearby¹³ and based on my observations and the evidence presented, I see no reason to disagree.

⁸ Section 66, Planning (Listed Buildings and Conservation Areas) Act 1990

⁹ Paragraph:013 Reference ID:18a-013-20190723

¹⁰ Paragraph 5.49, Historic Environment Desk-Based Assessment, ref CR0452_1 prepared by Cotswold Archaeology, September 2020 & paragraph 3.17, Heritage Statement of Case prepared by Cotswold Archaeology, February 2021

¹¹ Drawing number 002 Rev A

¹² Paragraph 199 National Planning Policy Framework

¹³ Paragraph 2, Page 7, Council's Statement of Case & wording of refusal reason 4 on decision notice

32. Policy SD6 of the JCS requires, amongst other things, development to protect landscape character for its own intrinsic beauty and have regard to the local distinctiveness and historic character of the landscape. Given that I have found the site has a strong rural character and that the proposal would be harmful to the historic rural landscape character of the appeal site, it follows that it would conflict with this policy. This is reinforced by the extract from the JCS Landscape Characterisation Assessment and Sensitivity Analysis (2013) provided¹⁴ which refers to the houses, farm and landscape features associated with Badgeworth Church as providing a particularly cohesive area of high landscape value, despite being small in size.
33. Paragraph 130c) of the Framework states that planning decisions should ensure that developments are sympathetic to local character and history, including the surrounding built environment and landscape setting. As the proposal would fail to have appropriate regard to the historic environment, it would fall short of this.
34. Additionally, it would not fulfil all the design requirements outlined in policy SD4 of the JCS, in particular the principle relating to context, character and sense of place. I acknowledge that in general terms the design rationale for a bespoke contemporary dwelling incorporating good quality materials in a landscaped setting would not intrinsically amount to poor quality design. Furthermore, there may generally be some variety of design styles within the wider area. Nevertheless, for the reasons already outlined, the domestic development proposed would not be sympathetic to the particular context of the site. It follows that the imposition of conditions in relation to the detailing of materials, landscaping and boundary treatments would not surmount this more fundamental harm.
35. Accordingly, I find that the proposal would be harmful to the rural character and appearance of the area and to the significance of Badgeworth Manor, a designated heritage asset. Therefore, the proposal would conflict with policies SD4, SD6 and SD8 of the JCS. Taken in combination, and amongst other matters, these policies seek sensitively designed development that respects and makes a positive contribution to the character of the built, natural and historic environment.

Other considerations

36. The proposal would provide an additional dwelling towards the overall housing supply in a relatively accessible location. The Council states that it has a 4.35 year supply¹⁵ of housing sites and therefore, it cannot presently demonstrate a five year housing land supply. It follows that there is unmet need which weighs in favour of the proposal. In addition, there would be economic benefits associated with the construction of the dwelling and benefits accruing from the likely social and economic activity of the future occupants. The information before me does not quantify the extent of such benefits. However, given that the development is for one dwelling, they would be limited. Taken together, these benefits attract moderate weight.
37. The development of the site would make more efficient use of the land, general support for which is found in the Framework. Nevertheless, paragraph 124 of

¹⁴ Section 6, Impact upon Landscape, Council's Statement of Case

¹⁵ Section 8, Council's Statement of Case

the Framework states that account must be taken of the desirability of maintaining an area's prevailing character and setting. In these circumstances, this matter attracts limited weight. The appellants' intention to plant native fruit trees would form part of the landscaping for the proposal. Whilst there would be a link with the historic use of the land as an orchard, I am not persuaded that this element of landscaping would go further than would be necessary to address other development plan policy requirements. Therefore, it would not amount to a benefit, but rather a neutral factor in the overall balance.

38. I have had regard to the representations in support from local residents and the comments from Badgeworth Parish Council. I have addressed the points raised as part of the main issues. As such, there is nothing further in their content which leads me to a different view.

Green Belt balance

39. Paragraph 148 of the Framework advises that substantial weight should be given to any harm to the Green Belt. Moreover, very special circumstances to allow inappropriate development will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. In this case, the proposal amounts to inappropriate development, and moderate harm would be caused to the openness of the Green Belt. These factors attract substantial weight.
40. Additionally, significant weight is given to the harm that would result to the character and appearance of the area and the significance of a designated heritage asset. Moreover, there would be conflict with the overarching strategy for the distribution of new development across the joint core strategy areas. However, given the Council's inability to demonstrate this is meeting the identified need, then the conflict with this policy attracts moderate weight.
41. The other considerations in this case do not clearly outweigh the cumulative harm identified. Consequently, the very special circumstances necessary to justify the development do not exist. Therefore, the proposal would be contrary to the Framework and to policy SD5 of the JCS which seeks to protect the Green Belt from inappropriate development.

Overall planning balance and conclusion

42. The Council cannot demonstrate a 5-year supply of deliverable housing sites. In these circumstances, footnote 8 of paragraph 11 of the Framework deems that the policies which are most important for determining the application are out-of-date. The presumption in favour of sustainable development means that planning permission should be granted unless (i) the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed, or (ii) that any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole (the tilted balance). The appellants consider that the tilted balance should apply in this case.
43. For the reasons already outlined above, I have found, having undertaken the heritage and green belt balancing exercises set out in the Framework, that the

proposal would adversely affect the significance of a designated heritage asset as well as be harmful to the Green Belt. Footnote 7 to paragraph 11 stipulates that the policies in the Framework relating to the protection of designated heritage assets and land designated as Green Belt provide a clear reason for refusing the proposal. As such, the tilted balance in paragraph 11d)(ii) is not engaged and the presumption in favour of sustainable development would not apply in this instance.

44. Planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise¹⁶. There are no other considerations, including the provisions of the Framework, that would justify determining the proposal other than in accordance with the development plan.
45. Therefore, for the reasons given above, I conclude that the appeal should be dismissed.

Helen O'Connor

Inspector

¹⁶ Section 38(6) Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.