



Appeal Decision

Site Visit made on 12 October 2021

by Stuart Willis BA Hons MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2021

Appeal Ref: APP/C1625/W/21/3278806

13 Heather Close, Stroud GL5 3QY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a grant of planning permission subject to conditions.
- The appeal is made by Mr Malcolm Barnes against the decision of Stroud District Council.
- The application Ref S.21/0343/VAR, dated 11 February 2021, was approved on 10 May 2021 and planning permission was granted subject to conditions.
- The development permitted is variation of condition 2 (Approved plans) and removal of conditions 3 (Construction hours), 4 (EV Charging), 5 (Construction Management Statement), 8 (Biodiversity Enhancements), 9 (Biodiversity Lighting) & 10 (Levels) from the application S.20/1403/FUL
- The conditions in dispute are Nos 2, 3, 4, 5, 8, 9 and 10 which state that:
 2. The development hereby permitted shall be carried out in all respects in strict accordance with the approved plans listed below submitted 13/07/20 and 09/11/20: Site Location Plan, drawing 9 Proposed Block Plan Proposed Elevations, drawing 2 Proposed Floorplan, drawing 1 Proposed Site Section, drawing 5 Proposed Parking Plan, drawing CP Proposed Drainage Plan, drawing 8.
 3. With respect to works necessary to prepare the site and install the unit, no machinery or plant shall be operated, no process shall be carried out and no construction-related deliveries taken at the site except between the hours 08:00 and 18:00 on Mondays to Fridays, between 08:00 and 13:00 on Saturdays and not at any time on Sundays, Bank or Public Holidays.
 4. The development hereby permitted shall not be first occupied until the approved dwelling has been fitted with an electric vehicle charging point. The charging points shall comply with BS EN 62196 Mode 3 or 4 charging and BS EN 61851 and Manual for Gloucestershire Streets. The electric vehicle charging point shall be retained for the lifetime of the development unless they need to be replaced in which case the replacement charging point shall be of the same specification or a higher specification in terms of charging performance.
 5. Prior to any above ground development, a Construction Method Statement shall be submitted to, and approved in writing by, the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall:
 - I. provide for the parking of vehicles of site operatives and visitors;
 - II. provide for the loading and unloading of plant and materials;
 - III. provide for the storage of plant and materials used in constructing the development.
 8. Within 3 months of commencement of development, a specification (including methodology and programme of implementation) for the enhancement of biodiversity through the provision of bird and bat boxes shall be submitted to and approved in writing by the Local Planning Authority. The works so approved, shall be carried out in accordance with the approved programme of implementation and be retained thereafter for the lifetime of the development.
 9. Prior to the occupation of the dwelling hereby permitted a mitigation strategy in relation to the Rodborough Common SAC shall be submitted for approval by the LPA. For the avoidance of doubt, mitigation can take the form of the submission of a Unilateral Undertaking as was submitted for S.20/1403/FUL, but with the application

reference amended. Following agreement of the submitted mitigation strategy or amended Unilateral Undertaking, the scheme must be implemented in accordance with this details or contribution made, prior to the occupation of the dwelling.

10. No above ground works shall take place until details of the existing ground levels, proposed finished floor levels, ridge and eave heights of the dwelling and the proposed finished ground levels of the site including the parking area, relative to a datum point which is to remain undisturbed during the development have been submitted to and approved by the Local Planning Authority. The development shall be carried out in strict accordance with the details as approved.

- The reasons given for the conditions are:
 2. To ensure that the development is carried out in accordance with the approved plans and in the interests of good planning.
 3. In the interests of residential amenity in accordance with policy ES3 of the 2015 Local Plan.
 4. To promote sustainable travel and healthy communities.
 5. To reduce the potential impact on the public highway and accommodate the efficient delivery of goods and supplies in the interests of highway safety and accordance with Local Plan Policy ES3.
 8. To protect and enhance the site for biodiversity in accordance with paragraph 175 of the National Planning Policy Framework, Policy ES6 of the Stroud District Local Plan 2015 and in order for the Council to comply with Section 40 of the Natural Environment and Rural Communities Act 2006.
 9. To ensure that protected species and habitats are safeguarded in accordance with The Conservation of Habitats and Species Regulations 2017 (as amended).
 10. Ground levels must be agreed early in the implementation of the development in order to avoid a situation where unacceptable ground level alterations cannot be undone without significant reconstruction work. Ground levels need to be agreed to secure an acceptable finished building height in the interests of the surrounding dwellings and to ensure the satisfactory appearance of the development in accordance with Policies HC1 and ES3 of the Stroud District Local Plan, November 2015.
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Decision

1. The appeal is dismissed, and planning permission is refused.

Preliminary Matters

2. Following the refusal of the application the new National Planning Policy Framework (Framework) has been published. The parties have had the opportunity to comment on this as part of their appeal submissions and where made have been taken into account in my reasoning. There have been no fundamental changes to national planning policy relevant to the main issues of this appeal.

Background

3. Planning permission was granted for a dwelling subject to several conditions (original permission¹). An application (2021 application) was made to vary a number of conditions and was also approved. This altered and replaced certain conditions and is the subject of this appeal. A further planning permission² has been granted to vary condition 2 of the original permission subsequent to this appeal being submitted (recent permission).
4. The appellant submitted updated drawings during the course of the 2021 application that were not considered by the Council or referred to on the

¹ S.20/1403/FUL

² S.21/1738/VAR

decision notice. These included additional detailing but did not alter the general appearance or scale of the dwelling proposed.

5. They do not fundamentally alter the scheme upon which consultation took place and were referenced in the officer report by the Council. Therefore, the appeal and third parties would not be prejudice by my taking these into account. I have considered the appeal on the basis of these updated drawings.
6. Further plans submitted with and during the appeal were not before the Council at the time of their decision or subject to consultation during the application. These do alter the form and appearance of the dwelling. I cannot be sure that all interested parties would have had sufficient opportunity to comment on them and therefore I have not considered these revised plans as part of this appeal.
7. Although not given as a reason for condition 5 on the decision notice, the Council have indicated that part of their reasoning concerned living conditions. The appellant has had the opportunity to respond to this in their final comments.
8. During the appeal comments were sought from the main parties regarding condition 9 that related to the Rodborough Common Special Area of Conservation (SAC). A unilateral undertaking was subsequently submitted, and comments were sought again from the main parties and Natural England (NE). The main parties have therefore not been prejudiced by my consideration of this matter as part of the main issues.

Main Issues

9. The main issues of the appeal are the effect that varying or removing:
 - Condition 9 would have on the SAC,
 - Condition 8 would have on biodiversity,
 - Condition 2 would have on the character and appearance of the area and the living conditions of the occupiers of nearby dwellings, with particular regard to outlook and privacy,
 - Condition 10 would have on the character and appearance of the area and the living conditions of the occupiers of nearby dwellings, with particular regard to privacy and outlook,
 - Condition 3 would have on the living conditions of the occupiers of nearby dwellings, with particular regard to privacy, noise and disturbance,
 - Condition 5 would have on highway safety and the living conditions of the occupiers of nearby dwellings with particular regard to privacy, noise and disturbance and
 - Condition 4 would have on encouraging sustainable transport modes.

Reasons

Condition 9

10. The site falls within the catchment zone for the SAC. The SAC is designated due to its extensive area of calcareous grassland, comprising semi-natural dry

grasslands and scrubland facies on chalk or limestone. These areas can be subject to disturbance from informal recreational use, especially walking, dog walking and traffic causing erosion and disruption to grazing.

11. There is a reasonable likelihood that the SAC would be accessed for recreational purposes by future occupiers of the development. Although small in itself, this may lead to the harmful disturbance of the habitat and is likely to have a significant adverse effect on the integrity of the SAC, when considered in combination with other residential development in the surrounding area.
12. In these circumstances, the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) require that an Appropriate Assessment is carried out. The Habitats Regulations also indicate that permission may only be granted after having ascertained that a scheme will not affect the integrity of the SAC. I may give consideration to any conditions or other restrictions which could secure mitigation and so provide certainty that the proposal would not adversely affect the integrity of the SAC.
13. I have undertaken this assessment on a proportionate basis and adopting a precautionary approach.
14. The information before me, indicates NE and the Council consider that the impact of such development on the natural habitats in the SAC can be managed, by a number of projects and monitoring, including, encouraging greater use of alternative walking areas as part of the Interim Strategy for Avoidance (ISA).
15. Condition 9 requires a mitigation strategy for the SAC to be provided and suggests that this could take the form of a unilateral undertaking (UU). There is a planning purpose to the condition and securing mitigation is necessary.
16. No site-specific mitigation strategy has been provided and there is no clear indication of what such a scheme would entail, whether it is capable of being implemented or how it would be effective in the absence of a planning obligation. I cannot be certain, having sought comments from the main parties, that a scheme could come forward that would provide appropriate mitigation for the effects of the scheme on the SAC.
17. Planning Policy Guidance (PPG) advises that in exceptional circumstances a negatively worded condition requiring a planning obligation or other agreement to be entered into before certain development can commence may be appropriate, where there is clear evidence that the delivery of the development would otherwise be at serious risk (this may apply in the case of particularly complex development schemes).
18. On the basis of the evidence before me, this scheme does not meet the criteria set out by the PPG. Therefore, the condition is fundamentally flawed. No alternative wording has been suggested that would rectify the deficiencies in the condition.
19. As an alternative to the condition, the appellant has submitted a UU that would provide a mitigation contribution in line with the ISA. NE was consulted in the course of the appeal. They raised no objection to the content of the UU subject to appropriate mitigation being secured. The Council has not disputed the form, wording or level of contribution in the obligation. Nevertheless, I need to be

convinced that the payment would be used for its intended purpose and directly mitigate the impacts of the appeal scheme.

20. The obligation states the contribution would be for environmental and ecological mitigation. However, it does not stipulate which schemes within the ISA it would be used for and I have limited information on the status and progress of these projects. I sought clarification on where or how the contribution would be spent from the main parties, but specific details have not been provided. There is little evidence before me as to when the projects within the ISA will or have been implemented.
21. Consequently, I have no clear and up to date details regarding the condition or capacity of alternative facilities in the area or the timescale and funding to date of projects referenced in the ISA.
22. As such, I cannot be certain that the contribution would ensure that the effects of the proposed development were addressed. There is insufficient information to demonstrate that conditions are an appropriate mechanism of securing a scheme for mitigation, and that they would meet the requisite tests in PPG.
23. Accordingly, I am not satisfied that appropriate mitigation has been secured. The evidence before me indicates that there is potential for recreational disturbance to the SAC through additional activity associated with the proposed development, which has the potential to affect the integrity of the SAC.
24. Where suitable mitigation cannot be secured the Habitats Regulations state that planning permission should only be granted if there are no alternative solutions, that there are reasons of overriding public interest and suitable compensatory measures are secured. There is no compelling evidence to indicate that the appeal proposal is the only solution for such a scheme. Based on the individual merits of the case, the provision of 1 additional dwelling is not sufficient to amount to imperative reasons of overriding public interest. Finally, no compensatory measures have been put forward.
25. Condition 9 serves a useful purpose, and some form of control is necessary. However, it has not been shown that it can secure suitable mitigation or that it is capable of being amended to satisfactorily address the effects of the proposed development on the SAC. The scheme does not meet the requirements for a condition to be used to secure a planning obligation. The UU that has subsequently been provided also fails to provide appropriate mitigation.
26. Consequently, having regard to the Habitat Regulations, permission should not be granted. The proposed development could result in harm to the integrity of the SAC and as such is in conflict with the Habitats Regulations, Policy ES6 of the Stroud District Local Plan (Local Plan), and the provisions of the Framework.

Condition 8

27. I have not been provided with details of the records of swifts or hedgehogs in the area, or any evidence to demonstrate that the scheme would harm these species and their habitats. Moreover, no specific information relating to the relevance of bat boxes to the scheme has been set out. However, Policy ES6 of the Local Plan states that all new development will be required to conserve and

enhance the natural environment, including biodiversity. Such aims are supported in the Framework.

28. Therefore, the provision of some form of enhancement is justified and necessary to achieve policy compliance. No alternative form of securing enhancements has been provided or suggested. Without a condition in place there is no mechanism to secure enhancements.
29. As such, a scheme of enhancements is reasonable and necessary. Condition 8 continues to serve a useful purpose and it would ensure the proposal accorded with Policy ES6 of the Local Plan. However, had the appeal been allowed, the condition would have been amended to remove the stipulations specifying what form the enhancements should take as these have not been shown to be necessary.

Condition 2

Character and Appearance

30. Properties off the same lane as the appeal site are generally single storey with any first-floor accommodation being in the roof space. However, in nearby streets such as Kingscourt Lane and Heather Close the majority of dwellings are full 2 storey height. In many views the appeal property would be seen with both types of dwellings.
31. There is no uniformity to the properties around the appeal site with variation in terms of their design and form including their height, footprint, roofscape, materials and overall mass. Moreover, although not as numerous as at the proposed property, front and rear gable features are found at nearby properties including full 2 storey projecting gables. While the use of several gables would add to the bulk of the dwelling, the overall height would be comparable to the dwellings in the original and recent permissions. Given the diversity in the built form in the area, the proposed property would not appear incongruous.

Living Conditions

32. There are a number of windows facing on to the site from 98 Kingscourt Road. Nonetheless, the setting in from the shared boundary and height of the proposed dwelling would prevent it being an overbearing feature in the outlook from the property or its garden. Moreover, the orientation of the properties means that views would not be directly towards the gable or front elevation.
33. The proposed dwelling would be set in from the side boundary of the plot. The land levels at the garden areas for properties off the upper part of Kingscourt Lane are higher than the appeal site and therefore the full height of the dwelling would not be experienced from within them or their plots. Furthermore, boundary treatments would also screen part of the building.
34. The position and height of the proposed dwelling would be similar to that in the recent permission which represents a realistic fallback position.
35. Condition 7 requires the side elevation first floor windows to be fitted with obscure glazing. This would prevent overlooking and loss of privacy at the properties to the side of the dwelling. There is sufficient separation to the front and rear to prevent significant overlooking with only angled views to adjacent gardens and dwellings.

Condition 2 Conclusion

36. Therefore, varying the condition to make reference to the plans submitted during the course of the 2021 application would not unacceptably harm the character and appearance of the area or the living conditions of the occupiers of nearby properties with regard to outlook and privacy. The scheme would accord with Policies HC1, ES3, CP14 and ES12 of the Local Plan where they seek to prevent development that gives rise to unacceptable impacts on living conditions and require schemes to be respectful of the surroundings. Had the appeal been allowed condition 2 would have been altered accordingly.

Condition 10

Character and Appearance

37. Ground level details, including a cross section in relation to the adjacent properties, were provided as part of the 2021 application. However, no existing levels are shown, and details do not provide certainty for the changes proposed across the site as a whole. In addition, no levels information for the area to the front of the dwelling, that includes the parking area, are provided.
38. Land levels at and around the application site vary. Alterations could have implications for how the development sits in the townscape and relates to the adjacent properties. Details of eaves and ridge heights are not necessary as the scale of the dwelling is shown on the plans and will relate to the finished floor and ground levels.
39. Condition 2 requires the scheme to be carried out in accordance with the approved plans, including those showing the cross section of the site and certain spot level. However, at present insufficient information is provided for the site as a whole.

Living Conditions

40. The cross section provided shows the proposed dwelling in relation to the adjacent properties. Therefore, the relationship of the dwelling itself is clear. However, for much of the site there is limited or no details of existing or proposed land levels. There are gardens and properties, with windows facing the site, relatively close to the appeal boundary. In the absence of such details for the whole of the site, I cannot be sure that works to other parts of the site would be acceptable in terms of effects on the living conditions of the adjacent occupiers.
41. Without more level details of this scheme, it has not been demonstrated that more works would have been needed with the original permission. The recent permission has provided details of existing and proposed levels in line with the requirement of the disputed condition in the appeal permission.
42. There could be significant alterations to land levels prior to above ground works, after the current requirement for the information to be provided and agreed. Nevertheless, the timeframe given does not prevent the information being provided and agreed before this. The appellant could submit these details prior to the commencement of the development, should they wish to do so. That potential alterations to land levels could be costly were changes required does not mean the condition is not enforceable.

Condition 10 Conclusion

43. Consequently, condition 10 continues to serve a useful purpose and remains necessary, reasonable and meets the other tests set out in Planning Practice Guidance. It would ensure compliance with Policies HC1 and ES3 of the Local Plan where they seek to prevent development that gives rise to unacceptable impacts on living conditions and require schemes to be respectful of the surroundings. Had the appeal been allowed, the condition would have been amended to remove reference to the need for eaves and ridge levels.

Condition 3

44. I have not been presented with any development plan stipulation over working hours. Some noise and disturbance would be expected with such a development and a single dwelling is unlikely to take a significant time to complete. Nevertheless, the access and the site itself has properties, with habitable room windows and garden areas in close proximity to the site, some with low level boundary treatments.
45. As a result, vehicle movements and works at the site outside the hours suggested has the potential to be detrimental to the living conditions of adjacent occupiers. The hours stipulated are reasonable and would ensure sufficient time for works to be carried out while maintaining appropriate amenity levels.
46. While the appellant indicates they would seek to avoid unnecessary inconvenience, without a condition in place there would be no mechanism to control this.
47. Therefore, condition 3 serves a useful purpose, preventing unacceptable harm to the living conditions of the occupiers of nearby dwellings with regard to privacy, noise and disturbance. It remains reasonable, necessary and meets the relevant tests as set out in national guidance. It would ensure that the scheme accorded with Policies ES3 and CP14 of the Local Plan where they seek to prevent development that gives rise to unacceptable impacts on living conditions. Had the appeal been allowed it would not have been altered or removed.

Condition 5

Living Conditions

48. While the Environmental Health Officer did not object to the removal of the condition, this was said to be in relation to dust control. The route for traffic accessing the site would pass along the narrow lane near windows and garden areas. As with times of working there is potential for significant noise and disturbance to be experienced at these properties without appropriate controls. Similarly, the location of storage and equipment areas could impact on the occupiers of the adjacent dwellings.
49. As with working hours, while the appellant indicates they would seek to avoid unnecessary inconvenience, without conditions there would be no mechanism to secure this.

Highway Safety

50. The appeal site is located off a no through track along with several existing properties. Parking spaces are provided for the proposed dwelling. However, the track and access from the top of Kingscourt Lane are narrow being for the most part single lane with little space or verge to the side for refuge. It is unclear how construction traffic would be managed at the site and whether larger vehicles could access the site or would need to stop on the street above. In addition, it has not been shown whether the larger area behind the property would be capable of being utilised throughout the build for storage of materials and equipment.
51. The extent of changes to levels at the site is not known at this time. The appellant indicates that those works would give rise to the most intrusive operations in respect of parking of machinery and storage of waste and materials. I have reached the same finding. A not insignificant proportion of the traffic is likely to be prior to above ground works and therefore the requirement for the submission and agreement of the details should be prior to the commencement of the development.

Condition 5 Conclusion

52. Therefore, condition 5 continues to serve a useful purpose and remains reasonable and necessary to prevent unacceptable harm to the living conditions of the occupiers of nearby dwellings and highway safety. Its imposition would ensure that the scheme accorded with the living conditions and highways safety aims of Policies ES3 and CP14 of the Local Plan.
53. As a proportion of the works where such effects could arise would be prior to above ground works, were the appeal to be allowed the condition would have been amended to require the information prior to the commencement of the development.

Condition 4

54. The decision notice and officer report do not refer to specific development plan policies for seeking the electric vehicle charging point. However, the Manual for Gloucestershire Streets July 2020 guidance document does and there is a general support for sustainable transport in the development plan and other local guidance³. This reflects national policy with the Framework stating that proposals should ensure that appropriate opportunities to promote sustainable transport modes can be – or have been – taken up.
55. Parking provision is made to accommodate vehicles and the condition requires an electric charging point to be provided. Such a request is consistent with this policy background, is reasonable; and fairly and reasonably related in scale and kind to the development.
56. Retaining the condition would serve a useful purpose. It is necessary to ensure that the scheme accorded with the above development plan and national policy aims to support sustainable modes of transport.

³ Policies LTP PD 0.3 and LTP PD 0.4 of Gloucestershire's Local Transport Plan 2020-2041 and Policies SO4, SO5, CP8 and appendix C of the Local Plan

Other Matters

57. I have limited information relating to whether the disputed conditions are imposed routinely by the Council or not. Therefore, I cannot be certain that other cases are directly comparable to this one. In any event, I have considered whether they are appropriate to this scheme based on the proposal's individual merits.
58. The scheme is for a new dwelling, not a replacement one. However, the original and recent permissions represent potential fallback positions. As planning permission is already in place, it is likely that one of them would be implemented if this appeal were dismissed and planning permission refused. I give these fallback positions significant weight. Notwithstanding this, even though these may be subject to a similar obligation to the one provided in this appeal, the fallback does not alter my findings on condition 9 and I cannot be satisfied that appropriate mitigation is secured for the SAC in this scheme.
59. I do not have detailed information on other housing proposals located within the SAC catchment area. The suitability of other obligations in the wider area and the housing strategy are not a matter for this appeal.
60. Small-scale developments can make an important contribution to meeting the housing requirement. Nonetheless, given the scale of the proposal, the contribution to the mix and supply of housing in the area, as well as economic and social benefits resulting from the construction and occupation of the property, would be limited.
61. The Framework indicates that the presumption in favour of sustainable development does not apply where the application of policies that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. The SAC is an example of such an area/asset and the proposal is contrary to the relevant policies of the Framework in regard to this.

Conclusion

62. Condition 9 as originally imposed is not suitable to secure appropriate mitigation. No alternative wording for the condition that satisfactorily secures the mitigation is provided. It has not been shown that the scheme meets the requirements for a negatively worded condition requiring a planning obligation. The UU also fails to provide sufficient certainty that the effects of this proposal would be mitigated for given the lack of clarity over how, where and when any mitigation would be provided. Therefore, the original permission is fundamentally flawed.
63. While I have found that amending certain conditions would have been acceptable, the potential harm to the SAC is determinative. The proposal conflicts with the development plan when considered as a whole and there are no material considerations, either individually or in combination, that outweighs the identified harm and associated development plan conflict.
64. For the reason given above, and having regard to all matters raised, I conclude that the appeal should be dismissed, and planning permission refused.

Stuart Willis

INSPECTOR