
Appeal Decision

Inquiry Held on 7, 9, 10, 11 March 2022

Site visit made on 8 March 2022

by H Butcher BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th April 2022

Appeal Ref: APP/G1630/W/21/3280979

Land at Fleet Lane, Twyning, Tewkesbury GL20 6DQ

- 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 Newland Homes Ltd against the decision of Tewkesbury Borough Council.
 - The application Ref 19/01084/OUT, dated 31 October 2019, was refused by notice dated 22 February 2021.
 - The development proposed is a residential development for up to 52 units and associated works.
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Decision

1. The appeal is allowed and planning permission is granted for a residential development for up to 47 units and associated works at land at Fleet Lane, Twyning, Tewkesbury GL20 6DQ, in accordance with the terms of the application, Ref 19/01084/OUT, dated 31 October 2019, subject to the conditions in the attached schedule.

Application for Costs

2. An application for costs was made by Newland Homes Ltd against Tewkesbury Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The application was for up to 52 units. However, during the appeal this was reduced to 47 units. This reduction in units would not materially alter the nature of the application. Consequently, accepting this amendment would not prejudice any interested parties. I have therefore determined the appeal on this basis and altered the description of development in my decision above accordingly.
4. The application is made in outline with only access to be determined at this stage. Accompanying the application are layout plans and site sections but these have been treated solely on an indicative basis.
5. There are several listed buildings in the vicinity of the appeal site. The impact of the development on the setting of these listed buildings was not raised as a reason for refusal by the Council. Furthermore, it was not dealt with in the Council's Committee Report nor was the Council's Conservation Officer consulted. As set out under Section 66(1) of the Planning (Listed Buildings and

Conservation Areas) Act 1990, in considering whether to grant planning permission for development, special regard is to be had to the desirability of preserving the setting of any listed building affected. Consequently, I raised this with the main parties in advance of the inquiry and provided them with the opportunity to comment.

Main Issues

6. The main issues are:

- The effect of the development on the setting of Fleet Farmhouse which is Grade II Listed, and the setting of other listed buildings in the vicinity of the appeal site;
 - The effect of the development on the character and appearance of the surrounding area, and;
 - Whether the appeal site is a suitable location for residential development having regard to local planning policy.
7. The Council's third reason for refusal relating to foul sewage infrastructure is no longer being pursued by the Council subject to suitable conditions. There is no need, therefore, for me to take this matter further.
8. The fourth and fifth reasons for refusal relate to the requirement for affordable housing, and various planning obligations, to be secured by legal agreement. I now have two such agreements before me which I deal with in my decision below.

Reasons

Setting of Listed buildings

9. As set out in the Twyning Parish Neighbourhood Development Plan (NP) Twyning is a rural parish with a wide range of listed buildings which sit within a distinctive rural setting. This is evident in Twyning itself which is characterised by both its historic buildings and its rural environs. The appeal site forms part of the rural setting to Twyning being a field used for the grazing of animals, located on the edge of the village, and visible from the village green when looking north-east.
10. Along Fleet Lane, which bounds the site to the south, is Fleet Farmhouse, which is a Grade II Listed detached farmhouse dating from the early 17th Century. The appellant's heritage witness suggests that the appeal site may historically have been owned and farmed by the owners or occupiers of Fleet Farmhouse. This is a reasonable assumption to make, and one that might apply to other similar buildings of historic agricultural origin in the area, in particular Green Farmhouse (Grade II Listed), School Farmhouse (Grade II Listed), and various listed barns and pigsties (Grade II Listed) located around the village green. Consequently, the rural setting to Twyning, which includes the appeal site, contributes to the historic significance of these listed buildings and forms part of their wider setting.
11. The significance of Fleet Farmhouse sitting within its rural setting can be appreciated from a Public Right of Way (PROW) to the east, on the other side of the Avon River. Here the Listed Farmhouse can be seen with a riverside

setting in the foreground, and, rising up behind and to one side, a rural backdrop provided by the appeal site. Whilst Fleet Farmhouse is not experienced in the absence of other buildings, the appeal site nevertheless forms part of its remaining rural setting when viewed from the PROW.

Residential development of the site would create a developed backdrop to Fleet Farmhouse, thereby diminishing its rural setting, and consequently some of its significance when viewed from here.

12. The appellant's heritage witness also identified harm to the setting of Avon Cottage which is Grade II Listed and also located on Fleet Lane. He surmised that it may have been home to a day labourer who worked on the land surrounding Twyning thereby demonstrating some possibility of historic significance between the appeal site and Avon Cottage. The development of the appeal site would therefore also diminish this significance.
13. From the village green the various listed former farm buildings (noted above) can be experienced in the context of the village but also in the context of their wider rural setting. This is due to the view from the village green over the appeal site and to the countryside beyond. Residential development of the site would result in the loss of part of this rural setting to Twyning as experienced from here. This would have the effect of reducing the ability to appreciate the significance of the listed buildings around the green in terms of their link to the surrounding rural landscape. Consequently, some of the significance of these listed buildings, which is derived from their wider rural setting, would be diminished by the development.
14. In light of my findings above the proposal would conflict with policies SD8 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS) which seeks to conserve and enhance the setting of designated heritage assets as appropriate to their significance. I also find conflict with Policy GD3 of the NP which requires new development to respect local historic assets. Furthermore, the proposal would conflict with policy HER2 of the emerging Tewkesbury Borough Plan (BP) which seeks to protect against adverse impact on elements which contribute to listed buildings' special architectural or historic interest, which includes their setting.
15. The harm I have found would be 'less than substantial' in the terms of paragraph 202 of the National Planning Policy Framework (the Framework). The extent of this harm would not be negligible as put to me by the appellant. It would be greater than this, particularly given the harm to the setting of Fleet Farmhouse, and that this harm occurs in conjunction with other discrete heritage harms. Nevertheless, I am conscious that the harm I have identified to the significance of Fleet Farmhouse would arise from one view at a distance and that the other harms to significance identified would be modest given their impacts. The extent of harm overall I therefore find to be low within the 'less than substantial' harm category.
16. As per paragraph 202 of the Framework where a development will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. I carry out this heritage balance later in my decision.

Character and appearance

17. It is common ground between the parties that the development would result in harm to local character and appearance. Following a round table session on this topic and conducting a site visit it is clear to me that there would be some harm to views from the village green when looking north-east. Where currently there are open and rural views over the appeal site and towards Bredon Hill these views would be partially obscured by the development.
18. In addition to this there would be impacts on Downfield Lane and Fleet Lane which form the eastern and southern borders to the appeal site. These lanes currently have an overriding rural and undeveloped feel, due in no small part to the appeal site and the fields beyond it to the north. Downfield Lane, in particular, has a rural feel and is largely devoid of development, save for where it meets the junction with Fleet Lane, along which there is now residential development. It is also worthy of noting that Downfield Lane forms part of Shakespeare's Avon Way and is a national cycle route. The proposed development would therefore comprise an encroachment of built form into the countryside resulting in adverse urbanising impacts locally on Fleet Lane and Downfield Lane.
19. Views of the development would be possible from the PROW previously referred to above. However, from here it would be seen in the context of existing development in Twyning which would reduce its overall visual impact. It is relevant to note that none of the views I have referred to are identified as 'important public views' in the NP.
20. Whilst there is scope at reserved matters stage to retain the existing hedgerow and provide additional landscaping to soften the visual impacts of the development this would not eliminate the harm I have identified, particularly given the deciduous nature of native planting.
21. Taking the above points together the development would result in moderate harm to the character and appearance of the local area surrounding the appeal site. It follows therefore that it would conflict with Policies SD6 of the JCS and GD4 of the NP which seek to protect local landscape character. LAN2 of the emerging BP similarly seeks to protect landscape character.
22. The decision notice also refers to saved Policy LND3 of the Tewkesbury Borough Local Plan (LP) but this refers to a 'landscape protection zone' which is not being taken forward in the emerging plan; a plan which is at an advanced stage, therefore the relevance of this policy is reduced.

Suitable location for housing

23. It is again common ground that the appeal site falls outside of the defined settlement boundary for Twyning and does not fall within the criteria under Policy SD10 of the JCS for new housing on such sites. Accordingly, it conflicts with Policies SP2 and SD10 of the JCS, GD1 of the NP, and emerging policies RES2 and RES3 of the BP. These policies set out how new housing development will be distributed, broadly focusing the majority of development towards Gloucester and Cheltenham with smaller scale development at Rural Service Centres and Service Villages of which Twyning falls into the latter. As set out in paragraph 15 of the Framework the planning system should be

genuinely plan-led. That the proposed development runs contrary to the adopted and emerging development plans for Tewkesbury therefore constitutes a planning harm. The weight to be attached to this harm I consider below having regard to the Council's current housing land supply position.

Housing land supply

24. In light of a very recent appeal decision¹ which considered similar Housing Land Supply matters to those before this inquiry the parties agreed that, taking into account previous oversupply, the Council can currently demonstrate a 3.83 year supply of housing land using an April 2021 base date. This is not a minor undersupply of housing.
25. The Council also rehearsed arguments previously heard under the above referenced appeal that the current housing land supply position will be short-lived, as, upon adoption of the emerging BP, the Council will be able to demonstrate a 5 year supply of housing land. Whilst the examining Inspector for the BP did indicate this, it was in June 2021, and his finding was based on the housing land supply position as of April 2020. Housing land supply matters have moved on since then. In any event, housing land supply was not a matter to be tested by the examining Inspector in finding the BP sound; indeed, he makes this very point.
26. I accept that the emerging plan will provide housing allocations. However, of the allocated sites discussed at the inquiry, the evidence of their deliverability relied upon by the Council comprised statements of common ground which were all in excess of a year old. Again, things will have moved on in the intervening period. In respect of three of the sites there were more recent emails providing an update on progress, but one of these also talks about an alternative commercial use of the site.
27. Finally on this point, the actual position in terms of Housing Land Supply after adoption of the emerging BP will be unknown until such time as supply can be recalculated taking into account the newly adopted housing allocations and all other relevant matters that inform supply/requirement.
28. Taking all of these points together, I find that at this time, and with the evidence before me, the spatial strategy does not make sufficient provision for housing and I cannot be certain that the Council's current housing land supply position will be short-lived. The harm I have found in respect of conflict with the development plan's settlement boundary policies above therefore attracts only limited weight.

Planning obligations

29. Two bilateral planning agreements have been submitted with the appeal. The first is between the appellant and Tewkesbury Borough Council and provides for affordable housing, public open space, and a recycling contribution. The second is between the appellant and Gloucester County Council and provides for contributions for home to school transport, a Travel Plan, and a library contribution. It is necessary for me to consider these in detail and reach a finding on them having regard to the tests set out in Regulation 122(2) of the

¹ APP/G1630/W/21/3283839

Community Infrastructure Levy Regulations 2010 and the Framework at para 57.

30. Policy SD12 of the JCS requires 40% affordable housing on non-allocated sites of 11 dwellings or more. The first planning agreement secures on-site provision of affordable housing. To ensure adequate outdoor playing space is available for residents of the borough saved Policy RCN1 of the LP requires that developments of 10 dwellings or more make provision for outdoor playing space in accordance with the standards set out therein of 2.43ha per 1000 population. The outline permission can meet this provision on site. Finally, a contribution towards recycling and waste bins is required to ensure adequate provision for the storage and collection of waste. I am satisfied, on the evidence before me, that the obligations set out in the first agreement meet the relevant tests.
31. Turning now to the second planning agreement which includes a primary school transport contribution. The appellant disputes this. However, the only primary school within the 2-mile statutory walking distance of the appeal site is Twynning Primary School and the evidence before me is that this school is currently at 99.75% capacity and therefore unable to accommodate the surplus places likely to be generated by the development. There is capacity at other primary schools in the primary planning area in which the appeal site falls, but these are over the statutory walking distance. The required obligation would therefore cover the cost of a minibus to transport the primary school children generated by the development to school over the course of their primary school education.
32. Without this contribution there would be a clear harmful effect from the development on local educational provision. A minibus for primary school students of the development would be the most effective solution in the circumstances to deal with the additional demand in primary school places generated by the development and is highly likely to be used by future residents with primary school age children given its convenience. Taking these points together I am satisfied this obligation is necessary, directly related to the development, and fairly and reasonably related in scale and kind.
33. In addition to a primary school transport contribution the second planning agreement provides for a library contribution to address the impact on local library services of new users arising from the development. Furthermore, there is an obligation to submit a Travel Plan in respect of the development and provisions for its future monitoring. Travel Plans are essential tools in reducing the need to travel, and, where travel is necessary, to encourage such movement to be undertaken by sustainable modes. I therefore find these obligations meet the relevant tests.

Other matters

34. I have walked along Fleet Lane and Downfield Lane a number of times whilst conducting site visits, and this was during winter months and at times at dusk. Whilst I accept my visits provided only a snapshot of highway conditions I find no significant highway risk to future residents of the development and note the Council similarly raised no objection in this regard. The Council also raised no concerns in respect of the size of the development in relation to that of

Twynning nor were any specific cumulative adverse impacts raised in respect of this. Whilst it is regrettable that the local primary school is at capacity the impact of the development can be mitigated and as such would not constitute a reason to refuse planning permission. Finally, the water main crossing part of the site is a matter between the relevant parties.

Heritage and planning balance

35. I return now to the heritage balance. I have found 'less than substantial harm' to the setting of various listed buildings in the vicinity of the appeal site, most notably, Fleet Farmhouse which is Grade II Listed, the extent of which, within the category of 'less than substantial harm', I have found to be low. Notwithstanding this, the Framework is clear that great weight should be given to the conservation of designated heritage assets. I shall now weigh this harm against the public benefits of the proposal.
36. In light of my findings above on housing land supply I give the benefits of housing and affordable housing provided by the development significant weight. This is consistent with other Inspectors' findings on these matters². I am also mindful that the appellant is willing to commit to shorter than normal time limits for the submission of reserved matters and commencement of development meaning the site will come forward quickly which will help address the Council's current housing shortfall. In addition to this the proposal would also provide benefits in terms of two self-build plots, of which there is demand for, and would result in economic benefits through the creation of jobs in the short-term and the long-term support new residents would provide to local services. I give these benefits moderate weight.
37. Taken together, these public benefits carry significant weight which outweighs the 'less than substantial harm' to the setting of listed buildings in the vicinity of the appeal site.
38. I turn now to the overall planning balance which in light of the Council not being able to demonstrate a 5 year supply of deliverable housing sites is that of granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits.
39. I have found 'less than substantial harm' to the setting of heritage assets, the extent of which is low. I have also found moderate harm to local character and appearance. Finally, there is limited harm due to the proposal's conflict with the Council's spatial strategy. When set against the significant benefits of the proposal, it is clear that the adverse impacts would not significantly and demonstrably outweigh the benefits.

Conditions

40. I have attached conditions in respect of the submission of reserved matters, when these must be submitted by, and when the development must be commenced by. The time limits are short, as agreed by the appellant, in order to bring the development forward quickly to address the Council's housing land supply shortfall. I have also included a condition clarifying what should be submitted at reserved matters stage.

² APP/G1630/W/20/3256319, APP/G1630/W/20/3257625, APP/G1630/W/20/3259637, APP/G1630/W/21/3273676

41. I have included the standard plans condition detailing the plans submitted for outline approval. A condition limiting the number of houses permitted is also necessary to inform the scope of the permission.
42. As access is a matter for approval at this stage it is necessary to include conditions relating to the access junction, carriageways, visibility splays and their future management and maintenance to ensure safe access and egress to the site.
43. To ensure the development meets the energy performance targets outlined in the submitted Energy Statement a condition securing this is necessary. It is also necessary to ensure a suitable housing mix is achieved in line with local planning policy at outline stage therefore I attach a condition to this effect.
44. To protect the amenity of occupiers of neighbouring properties I have attached a condition requiring compliance with the Waste Management Plan submitted by the appellant along with the submission of a Construction Management Plan. To protect the interest features of the Upham Meadow and Summer Leasow site of Special Scientific Interest a condition requiring the provision of Homeowner Information Packs to all future residents is necessary. Finally, to ensure adequate drainage I have attached relevant conditions. It is not, however, necessary to attach a condition relating to a Travel Plan as this is covered by the second planning agreement as discussed above.

Conclusion

45. For the reasons given, and having had regard to all material considerations raised, the appeal is allowed.

Hayley Butcher

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Rowen Clapp, Counsel

He called:

Stuart Ryder BA(Hons) CMLI

Richard Pestell MPhil MRTPI

Paul Smith BA(Hons) BSc(Hons) DipDesBltEnvnt MRTPI

FOR THE APPELLANT:

Killian Garvey, Counsel

He called:

Paul Harris CMLI

Jonathan Edis BA, MA, MCIfA, IHBC

Simon Firkins BA(Hons) MTP MRTPI

Becky Brown BA(Hons) DIP TRP MRTPI

*Various other people spoke briefly on behalf of the main parties during the conditions and planning obligations sessions.

INTERESTED PERSONS:

Jeremy Horsfall	Twynning Parish Council
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David Lockett	Local resident
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DOCUMENTS SUBMITTED DURING THE INQUIRY

1. Council's opening submissions
2. Appellant's opening submissions
3. S106 Agreement between Newland Homes Limited and Tewkesbury Borough Council
4. S106 Agreement between Newland Homes Limited and Gloucestershire County Council
5. Policies SD8 of the JCS and HER2, HER3 and LAN2 of the emerging plan
6. Map of footpaths to the north and east of the appeal site
7. Updated Landscape and Visual Statement of Common Ground
8. Costs addendum from Council
9. Emails in respect of disputed sites
10. Final HLS Statement of Common Ground
11. Updated draft conditions
12. Updated POE for Richard Pestell
13. CIL Compliance Statement in respect of Document 3
14. CIL supporting information in respect of Document 4
15. Planning committee report for Part Parcel 9851 Maisemore
16. Housing mix condition from the Council
17. Council's closing submissions
18. Appellant's closing submissions

DOCUMENTS SUBMITTED AFTER THE INQUIRY

1. Press notice publicising the application as a planning application affecting the setting of a listed building
2. Council's cost response
3. Addendum Heritage Statement from the appellant
4. Appellant's final cost comments
5. Council's Heritage Assessment

Schedule of Conditions

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 1 year from the date of this permission.
- 3) The development hereby permitted shall take place not later than 1 year from the date of approval of the last of the reserved matters to be approved.
- 4) Application for approval of reserved matters shall include details of: materials to be used in the construction of the external surfaces of the dwellings and any hard surfaces, existing and proposed ground floor levels relative to Ordnance Datum Newlyn, proposed boundary treatments, and existing trees and hedgerows including those to be retained as well as measures for their protection during construction of the development.
- 5) The development hereby permitted shall be carried out in accordance with the following approved plans: 792-01 and 2019-F-009-008.
- 6) No more than 47 dwellings shall be constructed on the site pursuant to this planning permission.
- 7) Prior to the access hereby permitted being brought into use the existing hedges either side of the access shall be cut back to provide the required visibility splays as shown on approved plan 2019-F-009-008. The visibility splays shall be permanently retained thereafter.
- 8) Prior to the commencement of development the access junction with the existing public road shall be completed to at least binder course level.
- 9) No dwelling shall be occupied until the carriageways (including surface water drainage/disposal, vehicular turning heads and street lighting) providing access from the nearest public highway to that dwelling have been completed to at least binder course level and the footways to surface course level.
- 10) Prior to occupation of the development hereby permitted details of the proposed arrangements for the future management and maintenance of the streets within the development shall be submitted to and approved in writing by the local planning authority. The streets shall thereafter be

maintained in accordance with the approved management and maintenance details.

- 11) The development shall be implemented in accordance with the measures set out in the submitted Energy Statement which show the dwellings achieving an Energy Performance Certificate rating of A+.
- 12) A housing mix statement for the open market housing shall be submitted to the local planning authority either prior to or alongside the first application for approval of the reserved matters for written approval. The development shall be implemented in accordance with the approved details.
- 13) The development shall be carried out in accordance with the Waste Management Plan: Construction Control and Minimisation document submitted with the application.
- 14) No development shall take place until a construction management plan has been submitted to and approved in writing by the local planning authority. The approved plan shall be adhered to throughout the construction period.
- 15) Prior to the first occupation of any dwelling a Homeowner Information Pack (HIP) setting out the location and sensitivities of the Upham Meadow and Summer Leasow Site of Special Scientific Interest shall be submitted to and approved in writing by the local planning authority. Two copies of the HIP shall be provided to all future residents prior to the occupation of each dwelling.
- 16) No development shall commence until drainage plans for the disposal of surface water have been submitted to and approved in writing by the local planning authority. The details shall be in accordance with the proposal set out in the applicant's submission (Flood Risk Assessment and Drainage Strategy, 25 October 2019, Ref.: 792-ER-01). The details to be provided shall include a sustainable drainage system strategy document that demonstrates the feasibility of the proposed drainage system to manage flood risk and water quality for the life time of the development. None of the dwellings hereby approved shall be occupied until the drainage scheme has been implemented in accordance with the approved details.
- 17) No development shall commence until a management and maintenance plan for the proposed surface water drainage system has been submitted to and approved in writing by the local planning authority. The details to be provided shall include the arrangement for adoption of the drainage system by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime. The surface water drainage system shall be managed and maintained in accordance with the approved details.

- 18) No development shall commence until drainage plans for the disposal of foul water have been submitted to and approved in writing by the local planning authority. None of the dwellings hereby approved shall be first occupied until the foul water drainage scheme has been implemented in accordance with the approved details.
- 19) None of the dwellings hereby approved shall be first occupied until the need for foul sewerage improvements have been investigated and the resulting foul sewerage improvements have been fully implemented and completed and confirmed in writing as such by Severn Trent Water Limited to the local planning authority.