
Appeal Decision

Site visit made on 28 June 2022

by Laura Cuthbert BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 September 2022

Appeal Ref: APP/G1630/W/22/3290028

Land at Lawn Road, Lawn Road, Ashleworth, Gloucester GL19 4JS

- 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 S Gibbs against the decision of Tewkesbury Borough Council.
 - The application Ref 21/00009/FUL, dated 18 December 2020, was refused by notice dated 8 November 2021.
 - The development proposed is the erection of 4 detached dwellings and the demolition of a lawful Class D2 Gymnasium building (revised scheme to development granted under planning reference 20/00487/FUL).
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Decision

1. The appeal is allowed, and planning permission is granted for the erection of 4 detached dwellings and the demolition of a lawful Class D2 Gymnasium building (revised scheme to development granted under planning reference 20/00487/FUL) at Land at Lawn Road, Lawn Road, Ashleworth, Gloucester GL19 4JS in accordance with the terms of the application, Ref 21/00009/FUL, dated 18 December 2020, subject to the conditions set out in the attached schedule.

Procedural Matters

2. The Council cite the pre-submission version of the Tewkesbury Borough Local Plan 2011-2031 in the reason for refusal. Since the appeal was submitted, the Local Plan has been adopted by the Council on 8 June 2022. Therefore, full weight can now be given to the relevant policies of the Local Plan. The adopted Local Plan has also replaced the Saved Policies of the Tewkesbury Borough Local Plan to 2011 (adopted March 2006).

Main Issues

3. The main issues are the principle of proposed development, with specific regard to its location outside the settlement limits, and the effect of the proposal on the character and appearance of the area.

Reasons

Principle of Development

4. The proposal relates to a parcel of land on the edge of the settlement of Ashleworth. Ashleworth does not have a defined settlement limit in the development plan. As a result, the site lies outside of any defined settlement boundary. It is not allocated for housing and the proposals would not fall within any of the exceptions set out by the development plan to enable new development in the open countryside. It would not be supported by any other

policies. Therefore, by virtue of its location outside of any defined settlement limits, the proposal would conflict with Policy SD10 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011-2031 (Joint Core Strategy) (adopted December 2017) which sets out the appropriate locations for residential development and guides development to the most sustainable and accessible locations.

5. Whilst they were not cited in the refusal reasons, the Council also refer to both Policy SP2 of the Joint Core Strategy and Policy RES3 of the Tewkesbury Borough Local Plan 2011-2031 (Local Plan) (adopted June 2022) in the Officer's report. Policy SP2 identifies the distribution of new development in the area and the proposal would be contrary to this policy as it fails to meet any of the criteria set out. It would also be contrary to Policy RES3 which only supports new housing outside settlement boundaries in certain circumstances, none of which would apply to the appeal proposal.
6. However, despite this policy conflict, there is an extant permission for 3 dwellings¹ on the appeal site, granted planning permission in 2020, which could be implemented. The appeal proposal includes an additional dwelling on the site of an existing building, in addition to the 3 dwellings already consented. It is noted that the extant permission included a condition for the building on site to be demolished.

Character and Appearance

7. The site is a linear and overgrown parcel of land, situated on the edge of Ashleworth. The site gently slopes upwards from the road, and an existing access track runs along the north western edge of the site. The site widens towards the south western end, where there is a dilapidated building. This building benefits from a Lawful Development Certificate to be used as a gymnasium (Use Class D2)². However, it is noted that this use has not commenced.
8. Mature vegetation runs along the boundary to the south east, beyond which are the recently constructed dwellings at Rectory Close. A post and rail fence encloses the gymnasium building from the open countryside beyond. A fence and hedgerow run along the north western boundary of the linear part of the site. Whilst the position of the gymnasium building makes the appeal site irregular in shape, as confirmed by my site visit, the site is experienced as a single parcel of land due to the enclosed nature of the site.
9. I also note that a further 42 dwellings have a resolution to grant planning permission as part of the second phase of the Rectory Close development, which would be located to the south of the appeal site.
10. As mentioned above, the site is not within any development limits defined by the development plan. However, due to it adjoining the new dwellings at Rectory Close and the presence of the dilapidated building, these all heavily influence the character and appearance of the appeal site. Consequently, the appeal site is an edge of settlement site, rather than an agricultural field in the open countryside.

¹ 20/00487/FUL

² 20/00178/CLP

11. The 4 dwellings would be served by the same access track, are all of a similar design, and would be read together as a single, edge of settlement development. They would face the open countryside to the north and the introduction of landscaping along the northern boundary would serve to mitigate the visual impact of the proposal, integrating the development into this edge of settlement location. Whilst the 1m and 1.5m screen planting proposed to the west of the appeal site is slightly lower than the 2m screen planting along the northern boundary of the site, the lower screen planting would still assist in mitigating views of the development from the wider open countryside. An appropriately worded condition would ensure a suitable landscaping scheme would be secured on the site.
12. Whilst the proposal would introduce a degree of urbanisation in the area, the dwellings, along with their associated domestic paraphernalia, would be seen in the context of the new dwellings at Rectory Close, either those already constructed or those with a resolution to grant. Due to its appropriate layout, density and proposed screen planting, the proposal would integrate with its surroundings, and would retain a sense of transition between the settlement and the wider open countryside.
13. The dwelling in the most south westerly position, which would replace the existing gymnasium building, would be situated at more of an angle than the other 3 dwellings. As a result of this slightly awkward position, and as alleged by the Council, it would appear to encroach into the countryside more than the other dwellings. However, its angled positioning simply reflects the irregular shape of the appeal site. It would still have a relationship with the existing, and further consented, built form of Ashleworth, and would not appear as incongruous.
14. The proposal would not harm the character and appearance of the area. The proposal would be in accordance with Policies SD4 and SD6 of the Joint Core Strategy and Policies RES4 and RES5 of the Local Plan. In combination, these policies seek, amongst other things, to ensure new development would respond positively to and respect the character of the site and its surroundings, and for development to protect landscape character for its own intrinsic beauty. These policies also support development where it is well related to existing buildings within the settlement and where an edge of settlement site is proposed, respect the form of the settlement and its landscape setting, not appear as an unacceptable intrusion into the countryside and retain a sense of transition between the settlement and open countryside. The proposal would also be in accordance with Policy LAN2 of the Local Plan, which was not cited in the reasons for refusal but is mentioned in the officer's report, which gives special protection to the visual amenity of the river environment.
15. It would also be in accordance with paragraph 130 of the National Planning Policy Framework (the Framework) (2021) which states that developments should be sympathetic to local character. It would also accord with paragraph 174 of the Framework which states that planning decisions should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, and by recognising the intrinsic character and beauty of the countryside.

Other Matters

16. The main parties agree that the Council is not able to demonstrate a five-year supply of deliverable housing sites. In their Statement of Case, the Council considers that it has a 3.83 years' supply, which is 0.5 years less than the 4.33 years' supply the Council stated they had in their Officer's report. The proposal would make a modest contribution of four dwellings to the supply of housing. I have given this moderate weight which I take forward to the overall planning balance below.
17. Turning to the benefits, the proposal would provide a limited amount of short-term employment through the construction of the development and some further modest benefits would result from the additional support to the vitality of the local community from the future occupiers of the four houses. Future occupiers would have access to the services and facilities in Ashleworth, which would be accessible by foot or bicycle. These benefits carry modest weight in favour of the development.
18. Local residents and the Parish Council have expressed a wide range of concerns including noise and disturbance, flooding and drainage, highway safety, the impact of the proposal on biodiversity and the removal of existing vegetation. However, having considered the technical evidence before me and the views of the relevant statutory consultees and that of the Council, I consider that these matters can be controlled and maintained by appropriately worded conditions.
19. The land ownership of the vehicular access of the site, including their visibility splays, has also been queried by some local residents. However, no evidence has been provided to demonstrate that any alleged problems regarding land ownership could prevent the development from being carried out. In any event, the access arrangements and visibility splays are the same as those granted planning permission under the extant scheme for 3 dwellings. Therefore, I can only attach limited weight to these concerns.
20. I also note the concern of the Parish Council regarding the number of houses recently permitted in Ashleworth. The housing land supply is calculated on a boroughwide basis. As the Council is currently unable to demonstrate a five-year housing land supply, I can only give this concern little weight in the overall balance.
21. I note that a previous Inspector dismissed an appeal for an earlier scheme for 4 dwellings on the appeal site³. However, the circumstances of the appeal before me are different, given the consented scheme for 3 dwellings on the appeal site which has since been granted planning permission, and the lack of a five-year housing land supply.

Planning Balance

22. I have found that the proposal would comply with Policies SD4 and SD6 of the Joint Core Strategy and Policies RES4, RES5 and LAN2 of the Local Plan. However, I have found conflict with Policies SP2 and SD10 of the Joint Core Strategy and Policy RES3 of the Local Plan, by virtue of the site being outside of any defined settlement boundary and it not being allocated for housing. Therefore, the proposal would conflict with the development plan as a whole.

³ APP/G1630/W/18/3198546

23. Paragraph 11 of the Framework states that where there are no relevant development plan policies, or the policies which are most important for determining the application are out of date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as whole or specific policies in the Framework indicate development should be restricted. Footnote 8 of paragraph 11 confirms that this includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five-year supply of deliverable housing sites. As confirmed above, the Council cannot currently demonstrate a five-year supply of housing.
24. The proposal would provide a number of benefits set out above to which I have attached modest weight. I have also found no conflict with the development plan in terms of character and appearance of the area. In the context of paragraph 11 of the Framework, the adverse impacts of the development would not significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole. Therefore, the presumption in favour of sustainable development applies which points towards the grant of planning permission.
25. In conclusion, whilst not strictly in accordance with Policies SP2 and SD10 of the Joint Core Strategy and Policy RES3 of the Local Plan, the proposed development would provide a suitable location for housing, having regard to the character and appearance of the area, the approach of the Framework and the specific circumstances of this case. It would also represent sustainable development in accordance with paragraph 8 of the Framework.

Conditions

26. The Council have suggested 14 conditions. I have assessed these in light of the advice provided in the Planning Practice Guidance (PPG) and have amended them as necessary.
27. A condition setting a time limit for commencement of the development is required by statute. Of note is the alteration to the commencement of development condition from five to three years. The PPG advises that a longer period may be justified for very complex projects where there is evidence that three years is not long enough for completion of the preparations necessary before development can start. However, no justification has been provided and I have therefore amended the condition accordingly.
28. It is appropriate that there is a condition requiring the development to be carried out in accordance with the approved plans for certainty. Conditions regarding samples of materials, further details of window frames and doors and details of boundary treatments are necessary to safeguard the character and appearance of the area. A drainage condition is necessary to ensure that the development is provided with a satisfactory means of drainage as well as to prevent or to avoid exacerbating any existing flooding issues.
29. As already alluded to, a landscape condition is necessary in the interests of the character and appearance of the area. I have amended it slightly for clarity purposes.

30. A condition for the parking and turning spaces for the proposed dwellings to be completed prior to the occupation of the development is considered necessary in order to ensure that there are adequate parking facilities to serve the development. A condition requiring adequate visibility splays to be provided and for them to be kept clear of obstruction is necessary in the interests of highway and pedestrian safety. A condition to ensure that the dwellings are not brought in to use until an electric vehicle charging point is installed for each dwelling is necessary in order to encourage the use of more sustainable modes of transport. A condition to secure the vehicular access is constructed as shown on the approved site plan is necessary in the interests of highway and pedestrian safety.
31. Conditions to ensure the development is carried out in accordance with the ecological appraisal and that the ecological enhancements are implemented in full are both necessary to ensure the proposal would not harm protected species and to ensure a net gain in biodiversity. I have amended condition 10 to require a further report be prepared and submitted should any protected species be found during development.
32. A condition to restrict external lighting on the site altogether would not be justified. However, as the Council's Ecological Advisor recommends, a condition to ensure that the details of any external lighting should be submitted for the Council's approval is considered reasonable and necessary to ensure that there would be no adverse impact on protected species and the rural character of the area.
33. Precise details of the floor levels are considered necessary in order to minimise the visual impact of the development.
34. Finally, a condition requiring the 'gymnasium building' to be demolished is not reasonable or necessary given that the proposal would replace the building with a dwelling.

Conclusion

35. For the reasons set out above, the appeal should therefore be allowed.

Laura Cuthbert

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this consent.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:
 - 21720 / 10 Existing Site and Location Plan,
 - 01145_002 Rev B Proposed Site Plan,
 - 01145_003 Proposed Plans and Elevations House Type 1,
 - 01145_004 Proposed Plans and Elevations House Type 2,
 - 01145_005 Proposed Plans and Elevations House Type 3,

- 01145_006 Rev A Proposed Plans and Elevations House Type 4
 - SK02 Rev E Visibility Splay Assessment.
- 3) Notwithstanding the submitted details, no construction works shall take place above slab level until precise details and where appropriate samples of the following have been submitted to and approved in writing by the local planning authority. The works shall thereafter be carried out in accordance with the approved details and shall be similarly maintained there after:
- External facing and roofing materials
 - Details including profile and colour of the window frames and doors and their reveals.
 - Details of any colour tinting to glazing
 - Details of all boundary treatments and enclosures.
- 4) No above ground works shall take place until drainage plans for the disposal of foul and surface water flows have been submitted to and approved by the local planning authority, and the scheme shall be implemented in accordance with the approved details before the development is first brought into use.
- 5) No dwelling hereby permitted shall be occupied until precise details of a landscaping scheme have been submitted to and approved in writing by the local planning authority. The landscaping works shall be carried out in accordance with the approved details and shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the local planning authority gives written consent to any variation. If any plants fail more than once they shall continue to be replaced on an annual basis until the end of the 5 year maintenance period.
- 6) No dwelling shall be occupied until the car/vehicle parking area and turning spaces shown on the approved plan 002 REV B have been completed and thereafter the areas shall be kept free of obstruction and available for the parking and turning of vehicles associated with the development for the duration of the use.
- 7) The development hereby permitted shall not be first occupied until the visibility splays for each individual plot driveway access have been provided, as shown on the approved Drawing No 01145_002 Rev B Proposed Site Plan. The visibility splays shall be retained for the lifetime of the development. Nothing shall be planted, erected and/or allowed to grow on the triangular area of the land so formed which would obstruct the visibility described above.
- 8) The development hereby permitted shall not be first occupied until the proposed dwellings have 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 points shall be retained for the lifetime of the development unless they need to be replaced in which case the replacement charging points shall be of the same specification or a higher in terms of charging performance.

- 9) No dwelling hereby permitted shall be occupied until the vehicular access has been laid out and constructed in accordance with the approved plan SK02 Revision: E with the first 10 metres of the proposed access road, taken from the carriageway edge of the public road surfaced in bound material, and shall be maintained in accordance with the approved details thereafter.
- 10) The development hereby permitted shall be carried out strictly in accordance with the recommendations set out in the Focus Environmental Consultants Ecological Appraisal Ref. No.1958 Dated May 2020. If any protected species are found during the site preparation, demolition or construction phases of the development, works shall cease immediately, and a suitably qualified ecologist shall be consulted. Thereafter, a further report prepared by a suitably qualified ecologist shall specify the measures to be taken to render it suitable for the development hereby permitted. This report shall be submitted to and approved in writing by the local planning authority before any further development takes place. The development hereby permitted shall then be carried out in strict accordance with the additional approved measures.
- 11) Prior to the first occupation of the development hereby permitted, the ecological enhancements set out in the Focus Environmental Consultants Ecological Appraisal Ref. No.1958 Dated May 2020 shall be implemented and thereafter maintained for the duration of the use.
- 12) No external lighting shall be installed within the approved application site unless and until details of the lighting have first been submitted to and approved in writing by the local planning authority. The details shall include the type, wattage, location, and direction of the lighting. Any external lighting shall at all times be in strict accordance with the approved details.
- 13) Prior to the commencement of the development precise details of the existing and proposed ground levels and proposed finished floor level (including a datum point outside of the site) shall be submitted to and approved in writing by the local planning authority. The development shall thereafter be undertaken in accordance with the approved details.