



Appeal Decision

Site visit made on 28 September 2022

by L Page BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 October 2022

Appeal Ref: APP/F1610/W/21/3289555

**Land at Waters Edge, Lake 10, Cotswold Water Park, South Cerney
GL7 5QH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by CPS Holdings against the decision of Cotswold District Council.
 - The application Ref 21/00827/OUT, dated 18 February 2021, was refused by notice dated 18 August 2021.
 - The development proposed is outline planning application for the construction of 11no holiday homes along with access roads (including bridge), car parking, alterations to existing drainage ditch to create a new lagoon, creation of a new nature reserve area including alteration to land levels to create a new promontory on the southern shoreline, lowering of land on part of the western shoreline to create waterfowl habitat, erection of a bat barn, new reedbeds and other biodiversity enhancements and landscaping.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was submitted in outline with all matters reserved and any plans have been treated indicatively under the appeal.
3. The description of development is for the construction of 11no holiday homes. While the appellant suggests that they would accept a planning condition reducing this to 10no holiday homes, in light of the description of development, removal of even one, and notwithstanding a revised masterplan being submitted, would need all parties to consider the implications.
4. As such, it would represent a significant change, which should be facilitated through a new planning application and not as part of the appeal procedure, as set out in Planning Practice Guidance¹. Therefore, the quantum of development is clearly defined as 11no holiday homes in this case, and the appeal has been considered accordingly.
5. New evidence relating to flood risk was submitted at the start of the appeal. This does not fundamentally change the proposal and parties have had an opportunity to comment during the appeal. The new evidence has been accepted on this basis.

¹ Paragraph: 012 Reference ID: 21a-012-20140306

6. The site is located within the zone of influence of North Meadow and Clattinger Farm Special Area of Conservation (SAC). Consequently, the proposal has been considered in the context of statutory duties set out within the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations).
7. The site is within the setting of a Grade II listed building, the Former Road Bridge on Dismantled Railway. Consequently, the proposal has been considered in the context of statutory duties set out under Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Main Issues

8. The main issues are:
 - (a) whether the proposal is in an acceptable location;
 - (b) the effect of the proposal on ground and surface water;
 - (c) the effect of the proposal on the character and appearance of the area;
and
 - (d) the effect of the proposal on biodiversity.

Reasons

Location

9. The site is located on land at Waters Edge, Lake 10 in Cotswold Water Park and the proposal is for 11no holiday homes that would be defined as self-catering tourist accommodation.
10. Policy EC11 within the Cotswold District Local Plan 2018 (the LP) is clear that proposals for self-catering tourist accommodation will only be permitted where it is provided through the conservation and conversion of existing buildings, including agricultural buildings; or is appropriately located within development boundaries; or is exceptionally required to sustain the viability of the tourist attraction that is Cotswold Water Park.
11. Policy SP5 of the LP relates specifically to the Cotswold Water Park and states that proposals for sports, leisure, and/or recreational development will be permitted in accordance with set criteria. However, additional tourist accommodation is omitted, and not supported by the policy.
12. The proposal does not comprise the conservation and conversion of existing buildings, including agricultural buildings, and is located outside of development boundaries within the countryside. There is no evidence demonstrating that the proposal is required to sustain the viability of Cotswold Water Park. As such, the proposal would not be in an acceptable location. This is not something necessarily disputed by the appellant who is relying on the wider planning balance as justification.
13. Overall, the proposal would not be in an acceptable location and would not accord with Policies EC11 and SP5 of the LP, which among other things seek to manage the new tourist accommodation within the area. Due to its statutory nature, harm derived from conflict with the development plan on this issue should carry significant weight in the planning balance.

Ground and Surface Water Pollution

14. The site is located within a sensitive water environment where the potential harmful effects of ground and surface water pollution are clearly apparent. It is important that foul water flows generated by the proposal are adequately managed in this context.
15. Notwithstanding the appellant's contention that this matter rests solely with Building Regulations, there is significant policy coverage of drainage and pollution control within the development plan, as well as Paragraph 174 (e) of the National Planning Policy Framework (the Framework) and Planning Practice Guidance², and therefore the matters fall to be considered as part of the planning merits of the proposal under the appeal.
16. Without a drainage strategy proportionate to the outline nature of the proposal, it has not been demonstrated that an adequate solution is possible in principle. Therefore, whilst being mindful of Paragraph 55 of the Framework, without an appropriate baseline of evidence I cannot be confident that a planning condition would be effective in managing foul drainage to protect against the harmful effects of ground and surface water pollution.
17. In the Design and Access Statement it is proposed that the holiday homes would connect to the existing mains foul drainage system. However, the Environment Agency raises concerns that the Thames Water mains sewer is a considerable distance from the site, and that there is no evidence of discussions about capacity within the existing network.
18. There is no new evidence presented by the appellant other than what was before the Council and the Environment Agency at the time of the original application. As such, the Council's officer report and consultation responses from the Environment Agency are sufficient to make a finding on this main issue.
19. Overall, there is insufficient evidence to demonstrate that the effect of the proposal on ground and surface water would not be harmful. Consequently, the proposal would conflict with Policy EN15 of the LP and Paragraph 174(e) of the Framework, which among other things seeks to prevent unacceptable risk to public health. Due to its statutory nature, harm derived from conflict with the development plan on this issue should carry significant weight in the planning balance.

Character and Appearance

20. The site is located on land at Waters Edge, Lake 10 in Cotswold Water Park, outside of development boundaries and within the countryside. It sits adjacent to a small cluster of existing holiday homes and South Cerney Footpath 26, that are all located around the south eastern shore of the lake.
21. The site is mostly made up of unmanaged grassland and scrub vegetation³ with significant mature boundary features, including earth bunds, hedgerows, and trees. As such, views into and out of the site are generally restricted. Glimpses are available from South Cerney Footpath 26, but these are fleeting, and this section of the footpath is largely experienced amongst existing holiday homes.

² Paragraph: 016 Reference ID: 34-016-20140306

³ Indicative of the area's history as restored land after mineral extraction works.

22. The undeveloped nature of the site helps maintain a degree of openness around this part of the lake and acts as a buffer between the existing holiday homes and rural character and appearance of the wider countryside. As such, I agree with the Council in that the lake forms a transitional space, with lower density development enclosed by established informal green spaces.
23. The appellant refers to the lake benefitting from planning permission for 45 holiday homes, but the details of how, if or when these might be built out are not in front of me. Consequently, I cannot fully assess the potential implications.
24. Similarly, the appellant refers to the extent of development around other lakes nearby, however there are limited details in front of me to make a comparison. Furthermore, it is not clear that the extent of development around other lakes should set a precedent or represent a design imperative that this proposal must follow.
25. I acknowledge the Council's position that the proposal would urbanise the site in and of itself, clearly there would be development introduced where there currently is none and this would harm openness. However, there are a number of factors that would mitigate any potential harm.
26. These include that the site is a small area of land almost entirely visually contained by earth bunds and vegetation, and despite some limited vegetation clearance as part of the proposal, the introduction of additional landscape screening atop the bunds and elsewhere would only reinforce the containment of the site.
27. There would be glimpses of the proposal from South Cerney Footpath 26, but as I have already set out, these views along this section of the footpath would be in the context of existing holiday homes and only in the short term. Once landscaping measures become established the long term impact would be limited.
28. Even if there was a residual level of harm derived from developing the site, I am mindful of landscape and visual enhancements to the wider lakeside. Furthermore, I am also mindful that the proposal is submitted in outline with all matters reserved.
29. As such, there is additional flexibility at reserved matters to explore layout options to arrive at a suitable pattern of development, including additional landscaping measures to soften the built form so as to ensure assimilation with the landscape and existing holiday homes.
30. I am satisfied these mitigation measures would help avoid cumulative suburbanising impacts. The openness and rural character and appearance of the countryside and this transitional part of the Cotswold Water Park would be preserved by the proposal.
31. Overall, the proposal would not harm the character and appearance of the area and would not conflict with Policies EN2, EN4, SP5 and INF7 of the LP. Among other things, these policies seek to ensure development is of a design quality that respects the character and distinctive appearance of the locality.

Biodiversity

32. It is not disputed that the proposal would deliver biodiversity enhancements, including a new lagoon, the designation of the western section of the lake as a nature reserve, the creation of strategic ecological buffer between the proposal and the nature reserve to control disturbance, and the provision of green roofs on eight holiday homes.
33. Furthermore, it is not disputed that the proposal would include reedbeds, ponds and ditches (for great crested newt), native trees, scrub (for nightingales), bespoke bat barn, partial clearance on islands to create mosaic of habitats (for heronries and other water birds) and a new promontory created by reedbed on the southern edge of the lake, among other things.
34. Most of these biodiversity enhancements have been quantified using an appropriate metric calculation. Despite the loss of some shoreline and biodiversity as a result of construction, such as breeding territories of song thrush and reed bunting, the overall effect of the proposal would be a 16.81%⁴ net gain in biodiversity value compared to the existing baseline. This is something endorsed by the Council's biodiversity officer.
35. Overall, the proposal would provide biodiversity enhancements and comply with Policy EN8 of the LP in this regard, which among other things sets out that development will be permitted that conserves and enhances biodiversity and geodiversity, providing net gains where possible. Given the scale of biodiversity enhancements and compliance with the development plan, it is considered that the benefits should carry significant weight in the planning balance.
36. Whilst I note the appellant's contentions in relation to Paragraph 180(d) of the Framework, I disagree that the proposal's primary objective is to conserve or enhance biodiversity. This is not least due to how the description of development is framed, and the scale of the holiday homes component, which is appreciable.
37. Ultimately, it strikes me that the biodiversity enhancements are required to support the delivery of the holiday homes. Indeed, this is how the appellant has leveraged the biodiversity enhancements in seeking to justify the proposal's location.
38. In any event, I have attached significant weight to the biodiversity enhancements in the planning balance, and so for all intents and purposes the proposal is being supported in this regard. However, support does not inevitably equate to an approval, and the proposal's biodiversity enhancements still needs to be weighed in the overall planning balance.

Planning Balance

39. The proposal would conflict with the development plan because it would not be in an acceptable location, and there is a lack of evidence demonstrating that the effects of ground and surface water pollution would not be harmful. Given the statutory nature of the development plan, each incidence of harm and conflict with it should carry significant weight in the planning balance.

⁴ This is referred to in various documents from both parties as being 15.81%. Having checked the original source metric spreadsheet, 16.81% would appear to be the correct figure. In any event, I feel the differences are negligible and would not change the thrust of my assessment either way.

40. The proposal would accord with the development plan in relation to biodiversity and deliver enhancements which would amount to a net gain of 16.81%. The scale of biodiversity enhancements would generate significant weight in the planning balance.
41. The proposal would accord with the development plan in relation to preserving the character and appearance of the area, where any landscape and visual enhancements would act as mitigation to neutralise the harmful urbanising effects of additional development. In effect, landscape enhancements and landscape harms would counteract each other, and the end result is a neutral weighting in the planning balance.
42. Based on the above assessment, it is clear that there are two instances of harm and significant weight against the proposal. Cumulatively, this would outweigh the one instance of benefit and significant weight in favour of the proposal, resulting in conflict with the development plan as a whole.
43. There is limited evidence demonstrating that there is a particular locational need for additional tourist accommodation in the region, and this is reflected in the policy direction of the development plan which sets to restrict additional tourist accommodation within Cotswold Water Park. Consequently, the significant weight identified under Paragraph 81 of the Framework is not engaged in favour of the proposal.
44. Whilst I note the appellant's contentions about the effects of a potential recession on economic growth and the pandemic on the demand for holiday accommodation, there is no locational specific empirical evidence to this effect, and therefore I cannot give these matters more than limited weight.
45. There would be benefits to the construction industry and the appellant argues that these should be moderate in weight. However, the scale of the proposal is modest, and it is not clear that such benefits should be afforded any more than limited weight.
46. Altogether, socio economic benefits derived from construction and tourism through visitation and spending within the Cotswold Area of Outstanding Natural Beauty, among other things, would not generate any more than moderate weight in favour of the proposal. As such, it would not provide a material consideration of sufficient weight to change my conclusions on conflict with the development plan.
47. I acknowledge the appellant's contentions on how the planning balance should be constructed, I have separated out biodiversity and landscape matters into their respective main issues, addressing the relevant components of each, and carried forward the conclusions and weighting into the overall planning balance of my decision.
48. However, I have avoided disaggregating the components of each main issue when undertaking the overall planning balance. This is in order to avoid double counting potential benefits or disbenefits.

49. For example, among other things, the appellant affords significant weight to landscape enhancements overall, but also affords separate moderate weight to assimilation into the surrounding landscape. I have considered these matters as intrinsically linked under character and appearance. Therefore, they have been treated as falling within the overall weighting established through the assessment of the main issue.
50. Similarly, the appellant affords significant weight to biodiversity enhancements overall, but also affords separate moderate weight to existing water features, of which the new lagoon is a biodiversity enhancement. Therefore, they have been treated as falling within the overall weighting established through the assessment of the main issue.
51. Altogether, and on this basis, the proposal would conflict with the development plan as a whole, and there are no material considerations indicating that a decision should be taken otherwise than in accordance with it.

Other Matters

52. There is limited evidence submitted in relation to North Meadow and Clattinger Farm SAC, but it is not necessary for me to determine likely significant effects because I am dismissing the appeal for other reasons.
53. There is limited evidence submitted in relation to the Grade II listed building, the Former Road Bridge on Dismantled Railway. However, as I am dismissing the appeal for other reasons, the setting of the listed building would be preserved by my decision.
54. There is no indication that the proposal would enhance the setting of the listed building or that this is a matter requiring further investigation. This is because I have found the impact of the proposal on the character and appearance of the area would be neutral and one of preservation, not one of enhancement.
55. Neither the Council nor the Environment Agency took the opportunity to comment on the new flood risk evidence and for all intents and purposes, the new evidence is not contested. The new evidence suggests that the proposal is acceptable in relation to flood risk, but as I am dismissing the appeal for other reasons it is not necessary for me to investigate this matter further as it would not change the outcome of the appeal.

Conclusion

56. For the reasons given, the appeal is dismissed.

Liam Page

INSPECTOR