



Appeal Decision

Site visit made on 4 January 2023

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 February 2023

Appeal Ref: APP/F1610/W/22/3304455

Land at Bamford House, Silver Street, Tetbury, Gloucestershire GL8 8DH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning in principle.
 - The appeal is made by Ms Clare Dunn against the decision of Cotswold District Council.
 - The application Ref 21/04464/PLP, dated 24 November 2021, was refused by notice dated 3 February 2022.
 - The development proposed is described as 'Permission in principle for the erection of 1 dwelling.'
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal is for permission in principle, as provided for in the Town and Country Planning (Permission in Principle) Order 2017. The national Planning Practice Guidance (the PPG) advises that this is an alternative way of obtaining planning permission for housing-led development. It is a two-stage process: the first stage (permission in principle stage) establishes whether the site is suitable in-principle, and the second stage ('technical details consent') is when the detailed development proposals are assessed. Full planning permission does not exist unless both the permission in principle and the technical details consent are approved. This appeal relates to the first of these two stages.
3. The scope of the considerations in an application for permission in principle is limited to matters of location, land use and the amount of residential development. All other matters are considered as part of a subsequent technical details consent application if permission in principle is granted.
4. A permission in principle is a planning application and applies to the exercise of any functions under the Planning Acts. The site lies within Tetbury Conservation Area (the CA) and the Cotswolds Area of Outstanding Natural Beauty (the AONB). As these are determinative matters with regard to the matter of 'location' as part of the permission in principle stage, the parties have been asked for their comments in relation to this.

Main Issues

5. In light of the above and the Council's reason for refusal, the main issues are:
 - Whether or not the site would be an appropriate location for housing with particular regard to local and national policy, and

- The effect of the proposal on the character and appearance of the area having regard to the site's location within the CA.

Reasons

Whether a suitable location for housing

6. Policy DS1 of the Cotswold District Local Plan (the Local Plan) sets out the Council's development strategy whereby housing and employment will be located to positively promote sustainable growth. Most growth will be focussed on the 17 Principal Settlements, of which Tetbury is one, which have been identified and chosen on the basis of their social and economic sustainability, including accessibility to services and facilities. Development boundaries have been drawn around these Principal Settlements and the development boundary drawn around Tetbury is shown in Local Plan Policy S9. The appeal site lies outside, but adjacent to, the development boundary.
7. Under Local Plan Policy DS4, new-build open market housing will not be permitted outside Principal and non-Principal settlements, unless it is in accordance with other policies that expressly deal with residential development in such locations. For the purposes of Policy DS4 and the development plan, any land that falls outside development boundaries and non-Principal settlements, such as the appeal site, is referred to as countryside although I accept that the site is not set within fields. The Policy goes on to describe the certain types of housing allowed in the countryside - affordable housing, housing for rural workers, sites for gypsies and travellers and conversion of rural buildings. The proposal is none of these exceptions. Hence the proposed development is contrary to Local Plan Policy DS4.
8. The appellant wants to erect a self-build dwelling and contends that such a property is not an open market dwelling and that Local Plan Policy DS4 does not apply. Instead the proposal should be assessed against Local Plan Policy H3(2) as a Rural Exception Site. In such cases, single self-build plots may be brought forward as rural exceptions within, adjoining or closely related to the built-up area of villages, and where the person applying for the self-build dwelling meets a number of criteria. However, Tetbury is a Principal Settlement, and not a village, and therefore Policy H3(2) does not apply.
9. Nonetheless, under the Self-Build and Custom Housebuilding Act 2015 (as amended by the Housing and Planning Act 2016) and the Self-Build and Custom Housebuilding Regulations 2016, Councils have to provide some self-build custom housing (SBCH) plots and are required to keep a register of individuals and associations of individuals who are seeking to acquire serviced plots of land in their area, and publish it. Those authorities who hold a SBCH register have a duty to grant planning permission to enough suitable serviced plots to meet the demand for SBCH in their area.
10. With regards to the amount of supply and demand for SBCH plots in the District, in paragraph 4.28 of her statement the appellant refers to the government's published monitoring¹ data that shows demand for some 176 individual plots across all base periods from October 2016 until 30 October 2021, with only 62 planning permissions granted, indicating a shortfall of SBCH plots. In contrast, the Council refers to its up-to-date register and that it had

¹ Right to Build Monitoring 2016-2021

until 30 October 2022 to provide a single self-build plot, which has been met, and that 3 plots need to be provided between 31 October 2022 and 30 October 2023, which is likely to be met within policy-compliant development. To demonstrate a further mechanism for the provision of policy-compliant SBCH, the Council draws my attention to Local Plan Policy H1 that requires developers to provide 5% self-build plots on schemes over 20 dwellings. Despite the different figures, on the basis of the evidence before me I am inclined towards the Council's position as it holds the SBCH register and its figures include an additional year of monitoring.

11. The appellant informs me they have attempted to register on the Council's SBCH register a number of times without success. Neither party has explained the reasons for this, or the nature of any unresolved issues. Not being on the SBCH register means the statutory duty on the Council to provide enough serviced plots is not engaged towards that individual or group.
12. Furthermore, for SBCH the relevant authorities must be satisfied that the initial owner of the proposed home will have primary input into its final design and layout, otherwise it will not meet the definition of SBCH². The appellant has submitted a draft planning obligation³ by way of a Unilateral Undertaking (the UU) to show a willingness to secure a SBCH. The PPG makes it clear that it is not possible for conditions to be attached to a permission in principle stage, nor can planning obligations be secured. To demonstrate commitment to the tenure the appellant is now willing to amend the description of the development so that it specifically refers to 'self-build'. Even if I were to agree to this change, the proposal would still not accord with the Council's housing policies for the reasons I have set out above.
13. The appellant contends that policies should be flexibly applied. Both parties have drawn my attention to a number of appeal decisions allowing and refusing housing development outside development boundaries. In the appellant's submitted appeal examples at South Cerney⁴ and Drakes Broughton⁵, housing was allowed in villages outside development boundaries. The Council informs me that the South Cerney decision was not typical of other appeal decisions it has been successful in defending. The Drakes Broughton decision is in another part of the country for a different Council and has little relevance to Tetbury. Whilst other appeal decisions are capable of being material considerations, all decisions turn on their own particular circumstances based on the facts and evidence before those Inspectors at the time. I do not have the full details of these cases and do not have the benefit of having seen the sites so cannot comment on the Inspector's judgements or make any meaningful comparisons with the appeal site before me.
14. Furthermore, the appellant refers me to the *Richborough*⁶ High Court judgement. That case involved the interpretation of the Framework's presumption in favour of sustainable development where a local planning authority was unable to demonstrate a 5-year supply of deliverable housing land. This is not relevant to the case before me as the Council is able to

² "the building or completion by- (a) individuals, (b) associations of individuals, or (c) persons working with or for individuals or associations of individuals, of houses to be occupied as homes by those individuals".

³ Pursuant to Section 106 of the Town and Country Planning Act 1990.

⁴ APP/F1610/W/20/3262431 dated 6 April 2021

⁵ APP/FH1840/W/18/3197607 dated 19 June 2018

⁶ *Suffolk Coastal District Council v Hopkins Homes Ltd and Richborough Estates Partnership LLP v Cheshire East Borough Council* [2017] UKSC 37

demonstrate it has a 7.2 year supply of deliverable housing land such that its housing policies most important for determining the application are not out-of-date and hence the 'tilted balance' in Framework paragraph 11d) is not engaged. I am aware that the Framework requires strategic housing policies to determine the minimum number of homes needed. However, the Council says it is on course to deliver some 10,140 dwellings during the lifetime of the plan, which is a figure in excess of the objectively assessed need and that when measured against the government's Housing Delivery Test gives the Council 186%, well in excess of the 95% pass score. This indicates to me the Council is not experiencing any significant housing delivery problems to warrant allowing a single dwelling contrary to its housing strategy.

15. The fact that the site lies within the CA boundary surrounding Tetbury does not mean it is part of the built-up area of Tetbury, or give the site any greater suitability with regards the site's location to the built-up boundary for the purposes of the location of housing. Indeed, land and housing on the other side of The Splash is also excluded from Tetbury's development boundary. The purpose of a CA and its designation is a very different concept to the purpose of a development or settlement boundary as a planning tool to control the location of new housing for strategic purposes. The two are independent of each other, need not coincide and one can exist without the other. I accept that the site is not solitary or 'isolated' in the context of paragraph 80 of the Framework, and from my site visit I saw that the site may be as close, or as accessible, to Tetbury's services and facilities as other properties or sites within its development boundary. However, the site does not form an obvious or logical visual or physical extension to Tetbury due to the bank of woodland, the site's elevated position and separation and orientation from other properties.
16. The Council's policies set out a development and housing strategy that is broadly in accordance with the Framework to promote sustainable patterns of development. To allow new dwellings to be built outside settlement boundaries based on their proximity to services and facilities, even for a single dwelling as in this instance, could be too easily repeated in Tetbury and other settlements elsewhere in the district, giving rise to ad-hoc and unsustainable patterns of development that would undermine the Council's development strategy for the location of housing in settlements and the countryside.
17. Planning law⁷ requires that applications for planning permission are determined in accordance with the development plan unless material considerations indicate otherwise. Irrespective of whether the proposed dwelling would be for self-build for the appellant, the site is outside the development boundary of Tetbury where new housing is not permitted. The proposal would therefore be contrary to Local Plan Policy DS4 as set out above and would not be an appropriate location for new housing in terms of the Council's spatial housing strategy.

Character and appearance

18. The CA encloses the older centre of Tetbury, with its historic properties and street patterns. It also includes the two waterways that flow around the edge of the main built up area in the valleys and some areas of undeveloped land either side of them, as well as part of the disused railway line. Its heritage

⁷ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990.

significance is principally derived from its architectural and historic interest. The woodland adjacent to the appeal site, that forms part of a larger swathe of woodland that slopes down The Splash is historic (circa 1890s) and positively contributes to the setting of the CA.

19. The appeal site has been flattened from the wooded slope and laid out as a tennis court with mesh fencing around it. It sits adjacent to the woodland, and the tennis court itself is devoid of trees. This flat elevated site with no buildings on it makes a neutral contribution to the CA.
20. The site has little connection to, or intervisibility with, Bamford House and the other properties along Silver Street whose rear gardens abut the appellant's land around the appeal site. The traditional properties that tumble down Fox Hill towards the appeal site and other properties adjacent the bridge and on the opposite side of Fox Hill form part of an existing tight knit group of buildings that form a distinct part of the settlement of Tetbury. The appeal site does not read as part of this, having been created out of the wooded slope.
21. From the footpath along The Splash and along the disused railway on the other side of The Splash, glimpsed views of a dwelling would be possible through the woods, even if limited in summer when trees are in leaf. Views of the site would be greater from the narrowing Fox Hill as it links to The Splash. Even if views are limited this does not mean the development is not capable of causing harm. Whilst a sympathetic design and use of materials could be put forward at Technical Details stage, the proposal would nonetheless introduce built development on an unbuilt elevated site at the top of the wooded slope. Whilst the proposal would not involve the felling of trees, the erection of a dwelling on the site would erode the contribution the surrounding woodland makes to this undeveloped setting of this part of the CA. As the woodland is an integral part of the CA it follows that the contribution the site makes to it would be diminished as a result of the proposal. Hence the proposal would fail to preserve or enhance the character or appearance of the CA.
22. The harm caused to the significance of the heritage asset would be less than substantial. In such cases paragraph 202 of the Framework states that the harm should be weighed against the public benefits. In accordance with paragraph 199 of the Framework I attach great weight to the conservation of the heritage asset.
23. The proposed development would contribute to the supply of housing, but I give this moderate weight in light of the fact the Council has a 5-year housing land supply and the absence of a significant SBCH shortfall. The alleged working from home opportunities can apply to many dwellings, and the proposal is not described as a live-work unit so I give this little weight. Similarly, the appellant's intentions of creating a low-carbon home are laudable, but with no evidence of especially innovative or exceptional measures at the permission in principle stage I give this limited weight. There would be some economic and social benefits to the wider community and vitality of Tetbury arising from jobs during construction and local spend. However, the erection of one dwelling would mean these benefits would be very modest. The retention and maintenance of the woodland and stone boundary wall should form part of good land management. There is no substantive evidence and nothing I saw on site to indicate to me that the integrity of these features is in

jeopardy and that a new dwelling would be the only means of securing their survival.

24. I conclude there are no public benefits that would be sufficient to outweigh the harm that would be caused to the CA. The proposal would therefore fail the statutory tests and be contrary to the Framework guidance. Accordingly, the proposal would be contrary to Local Plan Policy EN11 that seeks to ensure that development preserves or enhances the CA.

Other Matters

25. Bamford House is Grade II listed, as are a number of other terraced properties along Silver Street, whose significance is architectural and historic. I have therefore had special regard to the desirability of preserving the setting of a listed building under Section 66(1) of the Listed Buildings and Conservation Areas Act 1990. The settings of these buildings are principally experienced from Silver Street and from their back gardens. The appeal site's location is visually and physically divorced from Bamford House and its rear garden, as well as the other properties. From the submitted evidence and my site visit observations, I am satisfied that a dwelling on the site would have no effect on the setting of these listed buildings and in turn their significance.
26. In terms of the effect on the AONB, Local Plan Policy EN5 highlights the special qualities of the AONB as a rich mosaic of historic, social, economic, cultural, geological, geomorphological and ecological features. The Framework states that great weight should be given to conserving and enhancing the landscape and scenic beauty of AONBs, which have the highest status of protection in relation to these issues. The site and the whole of Tetbury and the environs beyond lie within the AONB. The parties are in broad agreement that a sensitively designed dwelling would not harm the special qualities of the AONB. I saw that the site is located on the wooded periphery of Tetbury, close to an essentially built-up area. The site is shielded from long range views as part of the extensive AONB beyond Tetbury by the bank and housing rising up on the other side of the valley and disused railway. From the evidence before me and my site observations, I am satisfied that the landscape and scenic beauty of the AONB would not be adversely affected and the proposal would not conflict with Local Plan Policy EN5.

Planning Balance and Conclusion

27. The erection of a dwelling, whether or not for self-build, would be contrary to the Council's strategic spatial housing policies. To develop the appeal site as proposed would be at odds with, and would undermine public confidence in, the plan-led system. This is of significant weight. It would also cause harm to the character and setting of the CA, to which I give great weight and which would not be outweighed by public benefits. Being previously developed land does not outweigh all other concerns. The proposal would therefore conflict with the development plan when taken as a whole and this conflict is not outweighed by other material considerations as identified above.
28. Therefore, for the reasons above the appeal should be dismissed.

K. Stephens
INSPECTOR