



Appeal Decision

Site visit made on 15 May 2023

by Rachael Pipkin BA (Hons) MPhil MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st June 2023

Appeal Ref: APP/P1615/W/22/3296764

**Land to the east of Harpers Close, Coalway Road, Coalway, Coleford
GL16 7FG**

- 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 Mr Paul Heal or Ernest Heal & Sons (construction) Limited against the decision of Forest of Dean District Council.
 - The application Ref P1360/21/OUT, dated 23 July 2021, was refused by notice dated 29 October 2021.
 - The development proposed is erection of 5 dwellings, construction of vehicular access and associated works (amended resubmission).
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Decision

1. The appeal is allowed and planning permission is granted for erection of 5 dwellings, construction of vehicular access and associated works at Land to the east of Harpers Close, Coalway Road, Coalway, Coleford GL16 7FG in accordance with the terms of the application, Ref P1360/21/OUT, dated 23 July 2021 and subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The original application was made in outline with all matters reserved for future determination. I have had regard to the existing and proposed site plans and the indicative layout of the proposed development as shown in these drawings but have regarded all elements of these drawings as indicative.
3. A previous scheme seeking outline planning permission for five dwellings, construction of a vehicular access and associated works on the same site was dismissed on appeal¹ on 30 September 2020. Since that decision, it has been established that the Council does not have a five year supply of deliverable housing sites. In addition, further evidence in support of the proposal has been submitted. This includes a Landscape and Visual Impact Assessment (LVIA) and arboricultural report. I have proceeded to deal with the appeal on this basis.

Main Issues

4. The main issues are:
 - the effect of the proposed development on the character and appearance of the area; and

¹ APP/P1615/W/20/3254461

- whether or not the proposed development would affect the integrity of the Wye Valley and Forest of Dean Bat Special Area of Conservation (SAC).

Reasons

Character and appearance

5. The appeal site lies on the southern side of Coalway Road which links the settlement of Coalway in the east and Coleford in the west. It lies within the Coleford Locally Valued Landscape which is valued for its openness. It also forms part of an area identified as Green Ring 1 under Map 10 of the Coleford Neighbourhood Development Plan 2018 (CNDP). The Green Ring separates Coleford Town from the outlying settlements which includes Coalway and contributes to the character of the wider area.
6. Coalway Road is characterised by linear development along its northern extent and smaller groups of residential development on its southern side. The appeal site itself forms part of a larger parcel of open land, positioned between a small development of housing around Harpers Close to the west and a small cluster of linear residential development to the east. To its rear, behind dense vegetation along its southern boundary, there is a golf course with Tufthorn Avenue some distance beyond. The site and golf course together contribute to the open setting and space between Coleford and the developed area to the rear of Tufthorn Avenue.
7. With the exception of the two clusters of existing development, the southern side of Coalway Road is characterised by the absence of development. This limits the sense of continuous development linking Coleford and Coalway, thereby avoiding coalescence of the settlements. The appeal site, as a reasonably long strip of undeveloped and open land, makes a positive contribution to this.
8. The effect of the proposed development on the character and appearance of the area has already been considered as part of the previous appeal. The Inspector concluded that the openness of the land would be eroded and that irrespective of the layout and landscaping, the proposal would deliver built form where there is currently none. This would result in a fundamental change to the character and appearance of the site that would be at odds with the open setting of the Coleford Locally Valued Landscape designation.
9. The previous Inspector did not have an LVIA before him. The LVIA includes a baseline assessment of the landscape character, concluding that the site is not representative of the Landscape Character Assessment description. It suggests the site is located in an area that exhibits a strong urbanising feel. However, from my observations, there was a degree of rurality and spaciousness along this road with limited development on the southern side which is more akin to a semi-rural environment. The site is nevertheless identified as having a medium landscape sensitivity. I agree with this assessment of sensitivity.
10. The LVIA identified four viewpoints, two along Coalway Road and two along public rights of way which traverse the golf course. The only viewpoints where the change would be perceptible would be along Coalway Road which has medium sensitivity to road users. The magnitude of change would be small. With augmented planting on site to enhance green infrastructure elements and boost biodiversity, the site would not be visible in long distant views.

11. The houses, viewed in the context of development opposite and adjacent, would not appear out of keeping subject to their appearance. In addition, due to the sloping nature of the site and its position at a lower level than the road, they would not be unduly prominent. The additional landscaping would also assist in this regard.
12. Together with the Harpers Close development, it would extend the stretch of linear development on the southern side of the road. This would result in a consequent loss of openness which would cause some harm to the locally valued landscape. It would also have an urbanising effect, creating a more continuous link of built development between the two settlements. However, it would only be seen from a short stretch of Coalway Road. Whilst it would detract from the open setting of Coleford, causing some reduction in its separation from Coalway, the effect would be quite limited. The LVIA does not lead me to reach a different conclusion to that of the previous Inspector that there would be harm to the character and appearance of the area although I find the degree of harm would be modest.
13. The appellant has suggested that the Council has applied Policy AP.69 of the Allocations Plan 2018 (the AP) in relation to valued landscapes as if it were a simple zoning policy. However, the Council has assessed the effect of the proposal on the character and appearance and explained its reasons. I have no firm evidence that the LVIA has not been taken into account. He has also suggested that any reliance on Policy AP.4 of the AP should be withdrawn by the Council. However, this is a matter that was addressed in the previous appeal where the Inspector set out that since this policy contained an environmental dimension it remained relevant. I have no need to address this matter further.
14. I recognise that the Harpers Close development was allowed on this southern side of Coalway Road in a similar position to the appeal site. However, justification for this was on the basis that the site had formed part of a domestic garden and had been included within the settlement boundary of Coleford by the advanced stage of, and now adopted, AP. In any event, it seems to me that this development has caused some loss of openness, therefore to add to this would only increase that loss and cause greater loss of the separation of settlements. It would not therefore justify the scheme before me.
15. I conclude that the proposed development would cause moderate harm to the character and appearance of the area. It would therefore conflict with Policies CSP1 of the Forest of Dean Core Strategy 2012, Policies AP.1, AP.4 and AP.69 of the AP and Policies CC4 and CNE1 of the CNDP. It would also conflict with paragraphs 130 and 174 of the National Planning Policy Framework (the Framework). Together, and amongst other things, these policies require development to maintain the separation of settlements, conserve the landscape setting of Coleford, including the Green Ring, to protect valued landscapes and to be sympathetic to local character.

The Wye Valley and Forest of Dean Bat SAC

16. The appeal site lies within approximately 1 km of the Wye Valley and Forest of Dean Bat SAC. This is protected as a European Site of Nature Conservation Importance and is subject to statutory protection under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations).

Regulation 63 prevents the competent authority from granting permission unless the proposal would not adversely affect the integrity of the European site. I am the competent authority for the purposes of this appeal.

17. The Wye Valley and Forest of Dean Bat SAC is a heavily wooded area edged by farmland. The area provides good conditions for both lesser and greater horseshoe bats. The area provides summer roosts, hibernation sites, flight-lines and feeding grounds for bats which form part of a wider ecological network. The sites conservation objectives can be summarised as avoiding a deterioration of habitats and minimising bat disturbance, thereby ensuring the integrity of the sites is maintained.
18. External lighting associated with the proposed development could adversely impact upon foraging and commuting behaviours of bats within the area. This would adversely affect the SAC.
19. The appellant has submitted a Preliminary Ecological Appraisal & Assessment Report 2019 and an additional report looking at the effect of light on the horseshoe bats. This report concluded that, in the context of existing light levels in the area, the proposed enhancements to the site including new native hedgerows and trees as well as no external lighting at the rear of the properties would avoid an adverse effect. These could be secured through the imposition of suitably worded conditions.
20. In accordance with Regulation 63(3) of the Habitats Regulations I have had regard to the representations made by the relevant statutory nature conservation body, in this case Natural England (NE). NE has confirmed that provided all mitigation measures are appropriately secured in any planning permission, then the proposed development will not have significant adverse impacts on designated sites.
21. Consequently, I am satisfied that the adverse effects of the proposal could be effectively mitigated through the imposition of conditions to control external lighting. As such, I have been able to complete my appropriate assessment and to conclude that the proposal would not adversely affect the integrity of the SAC.

Other Matters

22. Concerns have been raised about the additional traffic the scheme would generate in combination with nearby developments and the implications of this for highway safety. There is no substantive evidence that the scheme would lead to an unacceptable increase in traffic along the road. The highway officer concluded that based on the number of additional trips to be generated by a scheme of this size, it would not have a severe impact on the highway network, I have no reason to disagree with this conclusion.
23. No evidence has been put forward to demonstrate that an increase in traffic arising from this development would cause an unacceptable increase in air pollution.
24. The scheme would provide market housing. Due to the small size of the scheme, there is no policy requirement for affordable housing to be provided.
25. There is no evidence that the proposal would give rise to unacceptable pressure on local services and facilities.

26. A Grade II listed building, White Hall Farm lies on the opposite side of the road. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires me to have special regard to the desirability of preserving the listed building and its setting. The previous Inspector concluded that there is no evidence to suggest that the level of openness of the appeal site contributes to revealing the significance of the heritage asset or that the proposal would not preserve its significance in this context. No additional evidence has been put to me in this regard and I have no reason to reach a different conclusion than the previous Inspector.
27. The appeal site falls partly within the defined Development High Risk Area (DHRA) where there are coal mining features and hazards which need to be considered in relation to development proposals. Historic unrecorded coal mining activity is likely to have taken place at shallow depth with an associated risk of instability. No Coal Mining Risk Assessment was submitted with the application. However, the Coal Authority raised no objection to the scheme provided that a suitable condition is imposed on the outline permission to ensure new buildings and no significant groundworks will be required within the DHRA to ensure site stability and the safety of future occupants.
28. The Council has acknowledged that in the absence of a five year housing land supply the settlement boundary plan is out of date. As the Council has found no conflict in this regard, there is no evidence to substantiate the appellant's claim that the settlement boundary policies have been applied as a zoning policy.
29. The Council agrees it cannot demonstrate a five year supply of deliverable housing sites. It has been suggested by the appellant that the Council would have known that it did not have a five year housing supply at the time of the last appeal on this site. However, I have no firm evidence of this. In any event, I am dealing with the current appeal on the basis of the information before me.
30. The Council has invited me to consider the award of costs to the Council but has made no application itself. As I set out in my preliminary matters, I am satisfied that the circumstances are materially different to those at the time of the earlier appeal decision. I am not therefore going to make an award of costs.
31. The scheme has not been refused on the grounds of conflict with the spatial strategy and the location of development. The appeal site would however be outside but adjacent to the defined settlement boundary. As a small-scale scheme, it would not undermine the strategy. It has also been suggested that it would relieve pressure to expand into the rural areas, however, I have no firm evidence of this.

Planning Balance

32. The Council cannot demonstrate a five year supply of deliverable housing sites. With a 3.8 year supply, the shortfall in supply is significant. Therefore Paragraph 11 d) of the Framework would apply.
33. Paragraph 11 sets out that for decision taking 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: i. the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the

- development proposed; or ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
34. The proposal would make a small contribution to the supply of housing through the provision of five dwellings on a windfall site, delivered by small developers. It would also help to deliver housing within the Coleford area where I am told delivery has been constrained and delayed due to water problems. I have not been provided with substantive evidence of this.
35. It has been suggested that the scheme would deliver a wide range of housing types. However, the mix is not determined at this stage due to the outline nature of the proposal. In any event, it is a small scheme and therefore its range of housing choice would be limited.
36. The house would be in an accessible location, within walking distance of Coleford town centre and its services and facilities and on a bus route. Future occupants would therefore not be reliant on private car transport to meet their day-to-day needs. The provision of housing in an accessible location is a significant benefit of the scheme.
37. The proposal is intending to incorporate biodiversity enhancements to be secured by condition. However, I have little information about this and it therefore carries limited weight.
38. During construction, local workforce, suppliers and materials would be used. Future occupants of the houses would provide additional support to the local town centre through use of services and facilities. Economic benefits would arise from these. However, due to the small scale of the scheme these would be modest.
39. There are no highway or flooding risks associated with the proposal. Any coal mining risk could be addressed by a suitably worded condition. There are also no concerns in relation to ecology, biodiversity, the effect on protected habitats sites, the retention of a protected tree and visual and residential amenity. The scheme would be built to using Waste Minimisation Principles and best practice in construction. The dwellings would also be built to minimise carbon emissions. However, these are neutral factors in the balance.
40. Taken together, the benefits of the scheme carry significant weight in favour of the proposal. Weighed against this is the harmful impact of the scheme on the character and appearance of the area which I have found to be a moderate harm. In these circumstances, I find that the adverse impacts of the scheme would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
41. The previous Inspector did consider the implications for the proposal if the Council could not demonstrate a five year housing supply. He concluded that even if there were to be a shortfall, this would not outweigh harm that would arise in respect of the location of development and its effects on the character and appearance of the area.
42. Whilst this finding is noted, I have reached a different conclusion on the basis of the evidence before me in this appeal and the confirmed position in respect of the Council's housing land supply.

Conditions

43. The Council has suggested a number of conditions some of which I have already referred to earlier in my decision. I have considered these and imposed where they meet the tests set out in Paragraph 56 of the Framework, amending where necessary for the sake of simplicity, clarity and precision.
44. I have imposed the standard conditions relating to the approval of reserved matters and the commencement of development (1, 2, 3). A condition (4) requiring details of site and floor levels is necessary to ensure adequate information is provided to inform consideration of the reserved matters.
45. Conditions requiring a Construction Management Plan and a Construction Ecological Management Plan are reasonable in the interests of highway safety, protecting neighbouring amenity and safeguarding biodiversity during the construction phase.
46. Due to the proximity to the road, a condition securing noise protection for the residential units is necessary. In the interests of surface water management, a condition requiring details of surface water drainage is reasonable and necessary. In order to protect and enhance biodiversity, the requirement for a landscape and ecological management plan is reasonable.
47. The approval of the external materials of construction, landscaping and the provision of a footway link would be addressed through the reserved matters. Separate conditions relating to these matters are therefore not necessary.

Conclusion

48. For the reasons set out above, I conclude that the appeal should be allowed.

Rachael Pipkin

INSPECTOR

Schedule of conditions

- 1) Details of the access, 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 [3] years from the date of this permission.
- 3) The development hereby permitted shall take place not later than [2] years from the date of approval of the last of the reserved matters to be approved.
- 4) The details to be submitted under Condition (1) shall include existing and proposed site and floor levels and sections through the site.
- 5) No development shall take place, including any site clearance, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall be adhered to throughout the construction period and provide for:
 - a. 24 hour emergency contact number;
 - b. Hours of operation;
 - c. the parking of vehicles of site operatives and visitors (including measures taken to ensure satisfactory access and movement for existing occupiers of neighbouring properties during construction);
 - d. locations for loading and unloading of plant and materials;
 - e. storage of plant, waste and materials used in constructing the development;
 - f. measures to prevent mud being carried onto the highway;
 - g. measures to control the emission of dust and dirt during construction;
 - h. measure to protect vulnerable road users (cyclists and pedestrians);
 - i. any necessary temporary traffic management measures;
 - j. arrangements for turning vehicles;
 - k. arrangements to receive abnormal loads or unusually large vehicles;
 - l. methods of communicating the Construction Method Statement to staff, visitors and neighbouring residents and businesses;
 - m. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate.
- 6) No development shall take place, including any site clearance or groundworks, until a Construction Ecological Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP shall include, but not be limited to, the following:
 - a. Risk assessment of potentially damaging construction activities;
 - b. Identification of 'biodiversity protection zones';
 - c. Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements including but not necessarily limited to hedgerows, trees and great crested newts);

- d. The locations and timing of sensitive works to avoid harm to biodiversity features (e.g. daylight working hours only starting one hour after sunrise and ceasing one hour after sunset)
- e. The times during construction when specialist ecological or environmental need to be present on site to oversee works
- f. Responsible person and lines of communication
- g. The role and responsibilities on site of an ecological clerk of works (ECoW) or similar person
- h. Use of protective fences, exclusion barriers and warning signs
- i. Ongoing monitoring, including compliance checks by a competent person(s) during construction and immediately post-completion of construction works.

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

- 7) The details submitted under Condition (1) shall include a full surface water drainage scheme to be approved in writing by the local planning authority. The scheme shall include details of the size, position and construction of the drainage scheme. The drainage asset shall not connect directly or indirectly with the public sewerage network.

The details shall include a management plan setting out the maintenance of the drainage asset. The development shall be carried out in accordance with the approved details prior to the first occupation of the development hereby approved and shall be maintained in accordance with the management plan thereafter.

- 8) No development above ground level shall be commenced until details of a scheme of noise protection and sound insulation has been submitted to and approved in writing by the local planning authority. The residential units hereby approved shall not be occupied until the noise protection and sound insulation measures have been provided in accordance with the approved scheme. The approved noise protection and sound insulation shall hereafter be maintained as approved in perpetuity.
- 9) Prior to above ground works, details of external lighting shall be submitted to and approved in writing by the local planning authority. The details shall clearly demonstrate that lighting will not cause excessive light pollution or disturb or prevent bat species using key corridors, forage habitat features or accessing roost sites. The details shall include, but not be limited to, the following:
- a. A drawing showing sensitive and / or dark corridor safeguarding areas;
 - b. Description, design or specification of external lighting to be installed including shields, cowls or blinds where appropriate;
 - c. A description of the Lumosity of lights and their light colour;
 - d. A drawing(s) showing the location and where appropriate the elevation of the light fixings.
 - e. Methods to control lighting (e.g. timer operations, passive infrared sensor).

All external lighting shall be installed in accordance with the specifications and locations set out in the approved details, and these shall be maintained thereafter in accordance with these details. Under no circumstances should any other external lighting be installed without the prior written consent of the local planning authority.

- 10) A landscape and ecological management plan (LEMP) shall be submitted to, and be approved in writing by, the local planning authority prior to above ground works. The content of the LEMP shall include the following:
- a. Description and evaluation of features to be managed.
 - b. Ecological trends and constraints on site that might influence management.
 - c. Aims and objectives of management including those in relation to dormice and bats.
 - d. Appropriate management options for achieving aims and objectives including appropriate enhancement measures.
 - e. Prescriptions for management actions.
 - f. Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period).
 - g. Details of the body or organization responsible for implementation of the plan.
 - h. Ongoing monitoring and remedial measures.

The LEMP shall also identify the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan will be implemented in accordance with the approved details.

- 11) No development or significant operations shall be undertaken within areas defined by the Coal Authority as high risk areas at the site.

End of schedule