



Appeal Decision

Site visit made on 31 May 2023

by **O Marigold BSc DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 30 June 2023

Appeal Ref: APP/P1615/W/22/3313420

Land at Danford Lane, Hartpury, Gloucester GL19 3BQ

- 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 and Mrs Freeman against the decision of Forest of Dean District Council.
 - The application Ref P0698/22/FUL, dated 17 May 2022, was refused by notice dated 9 August 2022.
 - The proposed development is 6 dwellings, associated accesses, garaging, car parking and landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for proposed 6 dwellings, associated accesses, garaging, car parking and landscaping, at Land at Danford Lane, Hartpury, Gloucester GL19 3BQ in accordance with the terms of the application, P0698/22/FUL, dated 17 May 2022, subject to the conditions in the Schedule to this decision below.

Preliminary Matters

2. The Council's second reason for refusal referred to the need for additional survey work in respect of protected species. As part of the appellant's appeal submissions, further survey information was provided. The Council has had the opportunity to comment on this and so I am satisfied that no prejudice would be caused by my considering this information.
3. A Planning Obligation in the form of a Unilateral Undertaking (UU) pursuant to section 106 of the Town and Country Planning Act 1990 as amended has been submitted as part of the appeal. This makes provision for affordable housing and highway contributions. The Council has commented on this UU and has confirmed that it is sufficient for its third reason for refusal to be overcome. I see no reason to disagree, and I have taken the UU into account in reaching my decision.

Main Issues

4. The main issues are the effect of the proposal on:
 - the character and appearance of the area, including its designation as an Important Open Area, and
 - protected species, specifically bats, dormice and Great Crested Newts (newts).

Reasons

Character and Appearance

5. The site lies on the edge of the village of Hartpury. It is within the village settlement boundary and consists of pleasant, undeveloped pastureland, once used as an orchard. There are large two-storey dwellings opposite, on the former site of the village hall. Other dwellings locally are of varying storey heights and designs, including bungalows.
6. The site is identified in the Council's Allocations Plan (AP), adopted June 2018, as being an Important Open Area (IOA). The Council confirmed this designation based upon the criteria in its 'Important Open Area Keynote AP04' (the Keynote), dated March 2015. However, it accepts that its assessment incorrectly identified certain relevant features of the site, for instance by stating that there is public access, when in fact there is none.
7. Even so, the Keynote makes clear that not all IOAs have public access to them, and other IOA criteria remain relevant to the site. The site remains identified in the Development Plan as an IOA until any review of this designation, such as through the emerging Local Plan. However, this is at an early stage, with decisions still to be made on IOAs and their status, and so I can give very little weight to the emerging Plan.
8. Policy CSP.1 of the Core Strategy (CS), adopted February 2012, does not make specific reference to IOAs, but requires that new development must conserve or respect important characteristics of the environment. CS Policy CSP.9 requires that land identified as being of amenity value will be protected from development.
9. The proposal would result in the erection of six dwellings including garages, entrance driveways, parking areas and domestic lawns, together with the paraphernalia associated with residential uses such as children's playing equipment. As a result of this additional built form and domestication, the proposal would somewhat diminish the semi-rural character of the area.
10. The site is identified as having amenity value through its IOA designation and the built form and use of the proposal would result in at least some of this value being lost. As such, there would be conflict with CS Policies CSP.1 and CSP.9. In addition, AP Policy AP.1 identifies the importance of improving the environment whilst AP Policy AP.4 requires a positive contribution to the design quality of the area. I therefore find conflict with these policies and with the similar requirements of the National Planning Policy Framework (the Framework) and the Planning Practice Guidance (PPG).
11. However, the site is quite discreet, with trees and hedgerows lining its boundaries. As such, although it is visible from private gardens, public views of the site are restricted. As part of the proposal, sections of the existing hedgerow would be opened to create entrances, making it more visible. Even so, the proposed landscaping including frontage hedgerow would allow some of the site's edge-of-settlement character to be retained. The dwellings closest to the junction with the A417 would be bungalows of low profile and so their visual impact would be limited.
12. The other proposed dwellings would be fairly large in height and scale. However, they would be set back from the edge of Danford Lane and would be

detached with gaps between them, and to adjacent properties. This arrangement ensures that the proposal would have a reasonably spacious appearance and would not appear excessively cramped or dense. Dwellings of a large size are not uncommon locally, including those on the former village hall site and adjacent to the A417. Nor do I find that the proposed dwellings would be particularly bulky in appearance. For these reasons, it would not appear out of place.

13. Despite its IOA designation, the site has few if any particularly special or noteworthy features and its amenity value, including to the grain of the settlement's character, is therefore limited. For these reasons, I consider that the harmful effect of the proposal on its surroundings would be tempered. I therefore give only moderate weight to this harm and to the conflict with the policies and guidance referred to above.

Protected Species – Bats

14. The site is around 12km from the nearest part of the Wye Valley and Forest of Dean Special Area of Conservation (SAC). It is closer to functionally linked bat maternity roosts. The SAC is protected pursuant to the Conservation of Habitats Regulations 2017 as amended (the Habitat Regulations).
15. The site includes habitat suitable for bat forage and commuting which would be lost as a result of the proposal. Lighting and disturbance from the proposal and its occupiers would also be likely to negatively affect bats. As such, alone and in combination with other development, significant effects on the SAC cannot be ruled out. Accordingly, as the competent authority in the context of this appeal, I am required to undertake an Appropriate Assessment (AA).
16. During the application, a preliminary ecological appraisal found no evidence of bats on the site, but this was undertaken in winter when bat activity would be low and did not include full survey evidence. As part of the appeal submission, surveys were undertaken which found no evidence of bat roosts on site, but that a total of seven species were recorded to be utilising the site grounds.
17. The proposal would impact on hedgerows, which would greatly reduce their value to bats. It would also introduce night-time lighting, to which some bat species are sensitive. Nevertheless, measures such as pro-active bat conservation (for example bat boxes) and nocturnal lighting are proposed to sufficiently mitigate the effects of the proposal, through submission of further details by condition. In undertaking the AA, I have taken into account that Natural England does not object to the proposal and the Council does not disagree with the appellants' ecologist's findings or recommendations.
18. On this basis, I conclude that the impact of the development on the SAC could be adequately mitigated by the imposition of and adherence to planning conditions securing the measures I refer to above. Accordingly, I find that the adverse effects on the integrity of the SAC can be avoided and that the proposal would not have an unacceptable effect on it. The proposal would therefore accord with the Habitats Regulations in respect of bats.

Protected Species - Dormice

19. The site is within an area that at a strategic level has been identified as having potential for use by dormice. Only limited information about the effect of the proposal on dormice was provided at the application stage. Additional survey

work was undertaken following the Council's determination of the appeal application, and this found no evidence of dormice within the site.

20. On the basis of the undisputed evidence before me, the presence of dormice at the site, whilst not impossible, is very unlikely. Precautionary mitigation measures such as a buffer zone around hedgerows during construction would therefore be necessary, but these could be secured by condition. With these measures in place, the proposal would not have a harmful effect on dormice or their habitat.

Protected Species - Newts

21. The site is within a zone where newts are likely to be present. However, there are no aquatic habitats nearby and the nearest ponds are divided from the site by the busy A417. Although the site's hedgerows may provide some value for commuting amphibians, the general sward height of the grassland on site is of low value to them.
22. Nevertheless, the appellants' ecologist recommends measures such as precautionary working to reduce risks on newts. On the basis of these findings and recommendations, which can be secured by condition and with the Council does not disagree, the proposal would not have a harmful effect on newts.

Protected Species - Overall Conclusion

23. In light of my findings above, there is no need for me to determine whether the proposal would meet the derogation tests of the Regulations for a European Protected Species Licence for either bats or newts, because such licences are very unlikely to be required. The evidence available demonstrates that the site has little value for other species, such as badgers and birds.
24. For the reasons given above, the proposal would not harm protected species, specifically bats, dormice and newts. It would therefore comply with CS Policy CSP.1 and AP Policy AP.7 which require an acceptable impact on the environment and that protected species are taken into account. It would comply with the similar requirement in the Framework that biodiversity should be protected and enhanced, and with the advice in the PPG. As such, the effect of the proposal on protected species is neutral in the planning balance.

Other Considerations

25. The Council accepts that it has a five-year housing land supply shortfall, which is calculated in its Delivery Note 2021-2022 as being only 3.46 years. As such, there is no dispute that the Council's housing policies are deemed out of date. It is therefore necessary for me to determine whether the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits inherent in the proposal, to assist the Council in addressing its undersupply, as set out in paragraph 11 of the Framework.
26. I have found conflict with the Development Plan, but that this conflict carries only moderate weight. Against that, the proposal would make a positive contribution to the supply of housing in the area, by the addition of a further six dwellings. I give this benefit significant weight. I give additional limited positive weight to the fact that two would be affordable dwellings, in accordance with the requirements of CS Policy CSP.5.

27. I am also mindful that the Framework seeks to promote sustainable development in rural areas. Construction of the proposal would provide economic benefits to the local area, as would its future occupants, socially and economically. I give further limited weight to these benefits.

Other Matters

28. Residents have raised concerns regarding highway safety including conflict at the junction with the A417, increased use of Danford Lane and car parking. However, the evidence before me is that traffic movements generated by the proposal would not result in undue risk to highway safety or inconvenience, including for footway users. Adequate visibility splays would be provided and can be secured by condition. The number of car parking spaces would accord with the relevant guidance. I therefore see little reason to believe that the proposal would harm highway safety and I note that the Highway Authority did not object to the proposal.
29. I understand that spoil has been left on the site previously and that its levels have been altered, I am told without the consent of the Council. However, I have little reason to believe that any such changes would prevent the adequate disposal of surface water and foul drainage as part of the proposal. Details of these arrangements can be secured by planning condition.
30. The proposal avoids building on the existing public sewer and its easement, so I have little reason to believe that it would be harmed. The provision of additional infrastructure identified by the Council as being necessary would be secured through the UU. A planning condition can ensure that noise and disturbance from construction is appropriately managed. I have considered all matters raised but they do not change my overall conclusions.

Conditions

31. The Council has provided a list of conditions, which I have assessed and where necessary amended, having regard to the advice in the PPG. As well as the standard time limit for commencement, a condition requiring adherence to the approved plans is necessary for certainty.
32. A condition is required to secure a Construction Management Plan or similar, to provide details of how construction can take place without harming highway safety or the living conditions of nearby occupiers. This should include works at the early stages of development, such as ground works and vegetation clearance, and so a pre-commencement condition is required.
33. For highway safety reasons, conditions are required to ensure that all private streets and landscaped areas are appropriately managed and maintained, that the approved parking spaces and turning areas are made available and that the means of vehicular access is constructed and retained. For the same reason, a condition is necessary securing suitable highway visibility splays.
34. To encourage sustainable transport modes, a condition securing the provision of cycle spaces and Electric Charging Vehicle Points is necessary. To ensure adequate living conditions for nearby properties and highway safety, a condition is required securing details of surface water and foul drainage.
35. In the interests of the character and appearance of the area, conditions are necessary to ensure that the retained trees and hedgerows are suitably

protected during construction. For the same reason, the approval, provision, retention and replacement of hard and soft landscaping, including individual trees and hedgerows, should be secured by condition.

36. In the interests of ecology, a Construction Environmental Management Plan for Biodiversity shall be submitted, approved and implemented. Works at the early stages of development could affect biodiversity, and so a pre-commencement condition is required. However, I see no particular requirement for a verification report to be submitted. For similar reasons, a Landscape and Ecological Management Plan and details of external lighting also need to be secured by condition.

Planning Balance and Conclusion

37. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that applications for planning permission, and therefore appeals, must be determined in accordance with the development plan, unless material considerations indicate otherwise.
38. In light of my findings above, the site is not a habitats site as defined by the Framework and so the proposal benefits from the presumption of sustainable development in Paragraph 11 of the Framework. I conclude that the adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. Therefore, despite the conflict with the development plan, material considerations indicate that planning permission should be granted.
39. For the above reasons, having regard to the Development Plan as a whole, the approach in the Framework, and all other material considerations, the appeal should be allowed.

O Marigold

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin no later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: FMN22.01/01, FMN22.01/02, FMN22.01/03, FMN22.01/04, FMN22.01/05, FMN22.01/06, FMN22.01/07, FMN22.01/08, FMN22.01/09, FMN22.01/10, FMN22.01/11, FMN22.01/12, FMN22.01/13 and DLH-RR-DR-C-0010 REV P01 except where otherwise stipulated by conditions attached to this permission.
- 3) No development shall take place (including demolition, ground works and vegetation clearance) until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Plan shall provide for:
 - (i) A 24-hour emergency contact number
 - (ii) Hours of operation

- (iii) Parking of vehicle of site operatives and visitors (including measures taken to ensure satisfactory access and movement for existing occupiers of neighbouring properties during construction)
- (iv) Routes for construction traffic
- (v) Locations for loading/unloading and storage of plant, waste and construction materials
- (vi) The method of preventing mud being carried onto the highway
- (vii) Measures to protect vulnerable road users (cyclists and pedestrians)
- (viii) Any necessary temporary traffic management measures
- (ix) Arrangements for turning vehicles
- (x) Arrangements to receive abnormal loads or unusually large vehicles
- (xi) Methods of communicating the Construction Management Plan to staff, visitors and neighbouring residents and businesses.

The approved Plan shall be adhered to throughout the demolition and construction period.

- 4) No dwellinghouse hereby permitted shall be occupied or its use commenced until details of arrangements for the future management and maintenance of any proposed highway not put forward for adoption within the site has been submitted to and approved in writing by the Local Planning Authority. Following occupation of the first dwelling on the site, the highway not put forward for adoption shall be maintained in accordance with the approved management and maintenance details.
- 5) No dwellinghouse hereby permitted shall be occupied or its use commenced until the car/vehicle parking spaces (and turning space) as shown on the approved plans, has been completed. Thereafter the area shall be kept free of obstruction and be kept available for the parking of vehicles associated with the development.
- 6) No dwellinghouse hereby permitted shall be occupied or its use commenced until the means of vehicular access has been constructed and completed in accordance with the approved plans and the said means of vehicular access shall thereafter be retained for access purposes for the lifetime of the development.
- 7) The vehicular access hereby permitted shall not be brought into use until the existing roadside frontage boundaries have been set back to provide visibility splays extending from a point 2.4m back along the centre of the access measured from the public road carriageway edge (the X point) to a point on the nearer carriageway edge of the public road 30.8m left and 30.6m right (the Y points) as shown on the approved plans. The area between those splays and the carriageway shall be reduced in level and thereafter maintained to provide clear visibility above 1m at the X point and above 0.26m at the Y point above the adjacent carriageway level.
- 8) Prior to the occupation of any dwellinghouse hereby permitted full details of secure and covered cycle storage facilities for a minimum of two

bicycles per dwelling shall be submitted to and be approved in writing by the Local Planning Authority. Thereafter the approved details shall be implemented prior to the first occupation of the respective dwellinghouse that they serve and be maintained thereafter as approved.

- 9) Each dwelling shall not be occupied until it has been fitted with an Electric Vehicle Charging Point (EVCP) that complies with a technical charging performance specification, in accordance with details that shall have been submitted to and approved in writing by the Local Planning Authority. Each EVCP shall thereafter be maintained and used in accordance with the agreed specification unless replaced or upgraded to an equal or higher specification.
- 10) No development shall take place (including demolition, ground works and vegetation clearance), until a full surface water drainage scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include details of the size, position and construction of the drainage scheme, and results of soakage tests carried out at the site to demonstrate the infiltration rate. 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.
- 11) No development shall take place (including demolition, ground works and vegetation clearance), until a foul water drainage scheme been submitted to and approved in writing by the Local Planning Authority. 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 scheme thereafter.
- 12) The trees and hedges proposed for retention as shown on the Tree Constraints Plan and Protection Plan (Drawing No: FMN22.01/13) shall be protected during construction of the approved development in accordance with section 6.2 of BS5837:2012. The alignment of protective barrier fencing as shown on the Tree Constraints Plan and Protection Plan (Drawing No: FMN22.01/13), shall be installed prior to work commencing and remain in place until completion of the development.
- 13) Notwithstanding the submitted details, prior to above ground works commencing, a scheme for hard and soft landscaping of the site (incorporating existing flora) and including the means of enclosure and the materials to be used for hard surfacing, shall be submitted to and approved by the Local Planning Authority. The scheme shall include, but not be limited to:
 - (i) A plan showing existing vegetation to be retained and safeguarded during construction which shall be consistent with the Construction Management Plan.
 - (ii) A plan showing areas to be managed as public open space including a final state topography plan, where appropriate.
 - (iii) A landscaping implementation phasing plan.

(iv) Detailed planting/sowing specifications including species, size, density spacing, cultivation protection (fencing, staking, guards) and methods of weed control.

(v) Details of surfacing, boundary treatments and landscaping structures including design, location, hedgehog accessibility, size, colour, materials and openings.

Development shall be carried out in accordance with the approved scheme and the landscape implementation phasing plan. If at any time in the five years following planting any tree, shrub or hedge shall for any reason die, be removed or felled it shall be replaced with another tree, shrub or hedge of the same species during the next planting season.

- 14) Notwithstanding the submitted details, no development shall take place (including demolition, ground works and vegetation clearance) until a Construction Environmental Management Plan for Biodiversity (CEMPB) has been submitted to and approved in writing by the Local Planning Authority. The content of the CEMPB shall include, but not limited to the following:

(i) Risk assessment of potentially damaging construction activities

(ii) Identification of 'biodiversity protection zones'

(iii) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction including but not necessarily limited to dormice, reptiles, nesting birds, amphibians, badgers and hedgehogs

(iv) A strategy for the proposed hedgerow works including methodology and timings

(v) The location and timing of sensitive works to avoid harm to biodiversity features

(vi) Use of protective fences, exclusion barriers and warning signs, including advanced installation and maintenance during the construction period

(vii) A non-native invasive species protocol (e.g. for Japanese knotweed)

(viii) The times during construction when specialist ecologists need to be present on site to oversee works

(ix) Responsible persons and lines of communication

(x) The role and responsibilities on site of an Ecological Clerk of Works (ECoW) or similarly competent person(s)

(xi) Ongoing monitoring, including compliance checks by a competent person(s) during construction and immediately post-completion of construction works.

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

- 15) Notwithstanding the submitted details, prior to above ground works, a Landscape and Ecological Management Plan (LEMP) shall be submitted to,

and be approved in writing by, the Local Planning Authority. The content of the LEMP shall include, but not limited to the following:

- (i) Description and evaluation of features to be managed (including the hedgerows)
- (ii) Landscape and ecological trends and constraints on site that might influence management
- (iii) Aims and objectives of management including enhancement and mitigation in respect of protected species
- (iv) Appropriate management options for achieving aims and objectives, including appropriate enhancement measures
- (v) Prescriptions for management actions
- (vi) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a 5-year period)
- (vii) Details of the body or organisation responsible for implementation of the plan
- (viii) Legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer
- (ix) Ongoing monitoring and remedial measures
- (x) Timeframe for reviewing the plan and
- (xi) Details of how the aims and objectives of the LEMP will be communicated to the occupiers of the development.

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 shall be implemented in accordance with the approved details.

- 16) Notwithstanding the submitted details, before above ground works commence 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 bats or other species using key corridors, foraging habitat features or accessing roost sites. All lighting shall be installed in accordance with the specifications and locations set out in the approved details. These shall be maintained thereafter in accordance with these details. Under no circumstances shall any other external lighting be installed.

End of Conditions