



Appeal Decision

Site visit made on 28 July 2023

by Lewis Condé BSc (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th October 2023

Appeal Ref: APP/P1615/W/23/3316465

Woodcroft, Tibberton Lane, Tibberton, Gloucestershire, GL19 3AQ

- 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 and Mrs Ashwell against the decision of Forest of Dean District Council.
 - The application Ref P1501/22/OUT, dated 27 October 2022, was refused by notice dated 23 December 2022.
 - The development proposed is described as 'Erection of 1 No detached self-build dwelling house and associated works'.
-

Decision

1. The appeal is dismissed.

Application for costs

2. The appellants have made an application for the award of costs against the Council. This is subject to a separate decision.

Preliminary Matters

3. The proposal before me has been made in outline with all matters, namely access, appearance, landscaping layout and scale, reserved for subsequent application(s). I understand from the appellants' case that the submitted drawings are for illustrative purposes only, and I have considered them as such.
4. Although the above matters are reserved for later consideration, I must nevertheless consider whether an acceptable development could be devised based on the evidence before me.
5. The Council's third reason for refusal relates to whether the proposed development would harm the character and appearance of the area. The reason for this is intrinsically linked to whether works to a boundary hedge would need to be carried out to provide a safe form of vehicular egress from the site. As such, I have considered the implications of the proposed development on highway safety and the character and appearance of the area under a joint main issue.

Main Issues

6. Having regard to the above, the main issues are:
 - whether the appeal site is a suitable location for development having regard to local and national policy;

- the effect of the proposal on biodiversity;
- whether the site would be a suitable location for a new dwelling with regards to flood risk and surface water drainage; and
- the effect of the proposal on highway safety and the character and appearance of the area.

Reasons

Suitability of Location

7. The appeal site is an area of garden land associated with the residential dwelling of Woodcroft. Woodcroft is a detached dwelling set on a sizeable plot. It is located amongst ribbon development of several dwellings on the southern side of Taynton Road, approximately 800m to the north-west of the village of Tibberton.
8. The appeal site, being garden land, primarily comprises amenity grassland, as well as numerous trees, including several fruit trees that form part of a traditional orchard. The site is largely bound by mature hedgerows, whilst its northern boundary has a long frontage onto Taynton Road.
9. The surrounding area primarily consists of open agricultural land, while there is not a continuous built-up frontage or development between Tibberton and the appeal site. The surrounding area therefore has a highly rural character. Given the presence of the adjacent dwellings, the appeal proposal would constitute infilling development and would not be isolated in the context of paragraph 80 of the National Planning Policy Framework (the Framework). Nevertheless, it remains that the appeal site is in a rural setting, a significant distance from the settlement boundary of Tibberton.
10. Having regard to the development plan's spatial strategy, the site is within the countryside. The broad thrust of policies CSP.4, CSP.5 and CSP.16 of the settlement hierarchy of the Forest of Dean Core Strategy (adopted 2012) (the Core Strategy), supported by Policy AP1 of the Forest of Dean Allocations Plan 2006 to 2026 (adopted 2018) (the Allocations Plan), is for the promotion of sustainable development through directing most development towards towns, villages or groups of villages with reasonable levels of services, facilities and employment opportunities. This, amongst other things, is to protect the open countryside and reduce the need for travel, particularly by private motor car. This is broadly consistent with the aims of the National Planning Policy Framework (the Framework).
11. In particular, Core Strategy Policy CSP.4 outlines that most changes are expected to take place within towns and villages, with strict controls on development in the countryside unless certain limited exceptions are met.
12. Given the appeal site lies a significant distance outside the settlement boundary for Tibberton and has not been demonstrated to comply with any of the listed exceptions, the proposal would somewhat conflict with Core Strategy Policy CSP.4. However, the fact the policy identifies most changes are expected to take place in towns and villages suggests that the policy incorporates some level of flexibility.

13. Indeed, it is evident when considering the Core Strategy policies as a whole, that it does not seek to entirely exclude development outside settlement boundaries. Core Strategy Policy CSP.5 identifies the spatial distribution of planned housing numbers across the authority area by 2026, which are primarily concentrated towards larger villages and groups of villages. However, over 600 dwellings are planned for 'other villages and rural' locations, with only 60% of these identified as being at defined settlements. Thereby indicating an expectation that some housing will fall outside the settlement boundaries. This is further reinforced by Core Strategy Policy CSP.16 which specifically identifies that outside villages with a defined settlement boundary, approximately 235 additional dwellings are expected to be delivered over the period to 2026.
14. Core Strategy Policy CSP.5 further highlights that priority will be given to development on previously developed land (PDL). The main parties contest whether the site is PDL having regard to the definition provided within the Framework. Whilst the site may be set amongst a row of existing dwellings, it remains that it is positioned largely within open countryside as opposed to a built-up area (e.g. village/urban area where land may be at a premium). Having regard to the findings of *Dartford Borough Council v Secretary of State for Communities and Local Government & Anor [2017] EVCA Civ 141*, I do not find the appeal site to be in a built-up area. Accordingly, as per the Framework definition, it can be considered PDL and therefore attracts some degree of support from Policy CSP.5.
15. In respect of protecting the open countryside, only an indicative layout has been provided at this stage, much would therefore depend on the precise design of any scheme that may come forward at reserved matters stage. Nonetheless, I find it conceivable that a proposal could emerge that would read well with the existing adjacent built form and would not appear as an intrusive element that would harm the countryside setting.
16. However, it remains that the thrust of the Council's spatial strategy policies promote that development should take place in sustainable locations. The expectation being that they are served by a reasonable range of facilities and services and reduce the need for travel by private car.
17. Tibberton does contain a limited range of facilities and services, including a nursery/primary school, village hall and some recreational facilities. I also understand that there are various community/social groups that operate in the area. However, the facilities and services available are not deemed suitable to sustain day-to-day living.
18. Furthermore, the site is not closely related to the existing built form of the village. It is located along a section of unlit rural road, subject to the national speed limit, which is not served by pavements. The absence of surrounding pavements and lighting may not deter all persons from walking or cycling to local facilities. Nevertheless, in this instance, I consider it would still be a hinderance that would deter most occupants of the proposed dwelling, especially during adverse weather or periods of darkness.
19. The appellants have referred to a cycle route that avoids main roads and traffic, albeit no specific details of this route have been provided and the extent of the route and its physical conditions was unclear from my site visit. I am therefore unconvinced that this would be used on a frequent basis by potential future occupiers to access facilities and services.

20. The site is also not well served by public transport¹. Future residents of the proposed development are therefore likely to be heavily reliant on the use of private vehicles. This would be the least sustainable travel option and would undermine the Council's spatial strategy.
21. I appreciate that the provision of facilities in rural locations will not be equivalent to those found in more urban areas. Indeed, new residential development in rural areas can help to sustain existing available facilities. There is also understandably an expectation that some services/facilities will be shared between villages and larger settlements due to quantities of scale and demand. In this respect, I note that a range of further facilities can be found in the wider vicinity, including in Newent (approx. 4km away) and Gloucester (approx. 8km away). However, this does not alter my view that the site has generally poor access to facilities/services and therefore is not a sustainable location for the proposed development.
22. It is suggested that the use of electric vehicles, to be charged from renewable energy sources incorporated into the development's design, would provide a sustainable transport option. Whilst the incorporation of electric vehicle infrastructure is both positive and commendable, the use of such vehicles by future occupiers cannot be guaranteed. Imposing a condition(s) requiring their use by the occupants would also be both unreasonable and unenforceable.
23. I therefore find that the site would not provide a suitable location for housing having regard to the Council's spatial strategy, particularly given its poor access to local facilities and services, including public transport. As such the proposal would conflict with Policies CSP.4 and CSP.5 of the Core Strategy and Policy AP.1, of the Allocations Plan. Amongst other matters, these policies seek to ensure that development comes forward in appropriate locations.
24. The Council's reason for refusal also refers to Core Strategy Policy CSP.2. However, I have not found this to be directly applicable to this main issue, as although it relates to climate change, its focus is on how the specific design and layout of development will address impacts of climate change (e.g. through water management, biodiversity, heating/cooling).
25. The main parties agree that the Council is unable to demonstrate a five-year housing land supply. Accordingly, the appellants indicate that the Council's spatial strategy policies are 'out-of-date'. This is a matter that I will return to within the later planning balance.

Biodiversity

26. The Council refused the application based on its potential impacts on priority habitats and species, as well as the potential for the proposal to adversely affect the Wye Valley and Forest of Dean Bat Special Area of Conservation (SAC).

Priority Habitats/Species

27. A Preliminary Ecological Appraisal ('PEA') (Phase 1 Habitat Survey and Protected Species Survey Assessment) was submitted alongside the original application and was prepared by a suitably qualified ecologist.

¹ I am informed that a minibus service operates connecting the village of Tibberton to other centres in the wider area, however, have been provided with no specific details of this (e.g. levels of operation, pick-up locations etc).

28. The PEA acknowledges that hedgerows on the site are priority habitats, albeit further identifies that the site's northern hedgerow provides low to moderate ecological value, noting that it was species poor and not having the structural diversity needed to support hazel dormice or horseshoe bats. Accordingly, no further survey work was undertaken in line with the advice of Circular 06/2005.
29. However, the findings of the PEA are disputed by the Council's ecologist, who has identified that hedgerows on site appear to provide suitable habitats for both dormice and bats. In respect of dormice, the Council ecologist has further identified that there are existing records of dormice within the wider vicinity of the site and that the habitat appears to be suitable and connected.
30. Similarly, I understand that the appeal site lies within a highly sensitive area for horseshoe bats and that there are records of a lesser horseshoe bat roost within 600m of the site, with a further lesser horseshoe bat maternity roost within 2.7km. The Council further argues that these are functionally linked to the site.
31. No robust rebuttal has been provided by the appellants to counter the claims of the Council's ecology officer. The onus is on the appellants to demonstrate that the development will not cause harm to protected habitats and species.
32. Furthermore, the PEA identifies only a small section of the northern boundary hedgerow would be removed to accommodate access. Subsequently, it has been demonstrated that a significant extent of the hedgerow would be required to be removed/reduced to necessitate the visibility splays for the site access² (discussed further below). No updates to the PEA have been undertaken to consider the far more significant extent of works to the hedgerow.
33. Natural England's (NE) standing advice indicates that survey work should be undertaken if a development proposal is likely to negatively affect bats, including foraging opportunities or commuting habitats. Similarly, NE's standing advice for dormice also advises that survey work should be undertaken where the development will affect an area of hedgerow suitable for dormice.
34. Circular 06/2005 also states that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by development is established before planning permission is granted. I therefore do not consider that it would be appropriate to apply a condition to the grant of any permission requiring the undertaking of further survey work. A condition to require mitigation in the absence of further surveying would also not be appropriate as there can be no certainty that the mitigation would acceptably address any harm to the protected species.
35. In the absence of survey work to demonstrate otherwise, I cannot be certain that the proposal could proceed without causing a material adverse effect on a priority habitat (e.g. hedgerow) and priority species (i.e. bats and dormice). Consequently, with regards to this main issue, I conclude that the proposed development would be in conflict with Policies CSP,1 of the Core Strategy and policies AP1 and AP7 of the Allocations Plan, which seek to conserve, protect and enhance biodiversity and avoid, wherever possible, adverse impacts on protected species. Similarly, the proposal would not adhere to the provisions of the Framework in respect of protecting and enhancing biodiversity.

² As indicated on drawing: 'Indicative Layout with Splays (Draft) – Drawing No. AL.SK.110 Rev P3 – Dated Sept 2022'.

36. The Council also raised concerns regarding the proposal's potential impact upon the existing orchard at the site which is deemed to also be a priority habitat. However, I am less concerned by this aspect, given that it is conceivable that a scheme could come forward at reserved matters stage whereby the orchard trees are unaffected.

Wye Valley and Forest of Dean Bat SAC

37. The appeal site is also located within approximately 11km of the Wye Valley and Forest of Dean Bat SAC. This is protected as a European Site of Nature Conservation Importance and is subject of statutory protection under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations).
38. From the evidence before me, I understand that the SAC is a heavily wooded area with surrounding farmland and is designated as it supports significant proportions of Great Britain's populations of lesser and greater horseshoe bats. The bats thrive in the area due to substantial roosting opportunities that are set into the landscape and due to the provision of high quality and well-connected foraging habitats. Large maternity and hibernation roosts, that are designated as SSSIs, collectively make up the SAC. However, I am aware that the surrounding area also contains many smaller, non-designated, roosts within the landscape that are functionally linked and have been shown to be used by bats also using the larger roosts within their lifecycle.
39. Despite the distance that the appeal site lies from the designated SAC, the Council argues that it remains functionally linked through several summer roosts and hibernation sites as well as wider ecological networks (e.g. flight routes, foraging opportunities), which are deemed to be critical in supporting the SAC. The Council therefore argues that the appeal scheme through potential lighting impacts and loss of hedgerow could adversely impact on the bat population and the SAC.
40. As previously identified, the submitted PEA does not provide a detailed consideration of the potential impacts associated with the loss/reduction of a significant extent of the site's northern boundary hedgerow. The report has also not been supported by further survey work at the site in respect of bats.
41. Regulation 63 of the Habitat Regulations prevents the competent authority from granting permission unless the proposal would not adversely affect the integrity of a European Site. As the competent authority, should I have been minded to allow the appeal, it would have been necessary for me to complete an appropriate assessment, taking into account any potential mitigation. However, as I am dismissing the appeal for other reasons, I have not pursued this matter further.

Flood Risk/Drainage

42. The appeal site lies within Flood Zone 1, which represents a low probability of flooding from rivers or seas. However, the Council has provided an extract from the Environment Agency's Flood Map for Planning which indicates that the western portion of the site is at high risk from surface water flooding. Additionally, I have been provided with anecdotal and photographic evidence to demonstrate that the site has partially flooded in the past.

43. No flood risk assessment has been submitted alongside the proposal, but I am content that a scheme could emerge whereby built development does not take place on the area of the site that is identified to be at risk of surface water flooding.
44. Nevertheless, the Council's concerns lie with the ability for a viable surface water drainage strategy to be incorporated at the site, thereby not increasing the risk of flooding. The use of soakaways for ground infiltration is the Council's preferred method of managing surface water drainage at the site, in line with the hierarchy of drainage options established by both the Framework and Planning Practice Guidance (PPG) 'Flood Risk and Coastal Change'. The appellants have also indicated an intention for the proposed development to be served by a soakaway(s) and suggest that it could provide betterment on existing drainage conditions. However, due to identified geological constraints and no details of infiltration testing at the site, the local planning authority (LPA) has suggested that the use of a soakaway(s) to serve the proposal may not be feasible.
45. Indeed, concerns surrounding the ability for a soakaway(s) to be utilised at the site is also shared by the Council's flood risk officer (despite not objecting to the proposal subject to the use of pre-commencement conditions). In particular, the flood risk officer's consultation response stated: *"It is noted that infiltration has been proposed, however due to the geology at the postcode, it is likely that impeded drainage may reduce the effectiveness of soakaways. This must first be proven by infiltration tests undertaken in the location of the proposed soakaway and in accordance with BRE365"*.
46. It seems that the LPA has further investigated the potential constraints on drainage at the site beyond those considered by the flood risk officer. From the evidence before me, the Council has identified a series of constraints that suggest it would not be possible to drain the site by other methods within the SUDs hierarchy (e.g. via connections to either an existing watercourse, highway drain, or to a public sewer). The identified constraints include the availability of infrastructure and landownership arrangements. The issues raised by the Council have not been directly refuted by the appellants. Instead, the appellants deem that drainage matters could be dealt with either via condition or at reserved matters stage.
47. I appreciate that the appeal scheme is an outline application with all matters reserved for future consideration. As such, it is not expected that a complete drainage strategy should be devised at this stage. Nonetheless, the ability for appropriate drainage to be incorporated to serve the proposal is fundamental to whether the principle of development is acceptable. Given the concerns raised by the LPA and the lack of robust evidence to contest the issues raised, I cannot be satisfied, based on the information before me, that the proposal could incorporate a suitable surface water drainage scheme.
48. In coming to this view, I note that Severn Trent Water has not objected to the proposal. However, its response was on the basis that surface water from the development site would be discharged via a soakaway(s) or other SUDs techniques, or through an existing watercourse, as opposed to connecting to its apparatus.
49. In summary, even if a pre-commencement condition were to be added to the grant of any permission, I am unconvinced (based on available evidence) that

an adequate drainage scheme could materialise to serve the proposed development. Accordingly, I cannot be satisfied that the proposed development would be an acceptable location for a new dwelling with regards to flood risk and surface water drainage. The proposal therefore conflicts with Core Strategy Policies CSP.1 and CSP.2 and Policy AP.1 of the Allocations Plan. These policies, amongst other matters, seek to ensure development proposals are of a suitable, sustainable design that incorporate appropriate measures to manage surface water run-off and flood risk.

Highway Safety/Character and Appearance

50. As indicated, access is a matter reserved for future consideration. The illustrative drawings still indicate where the proposed access would be situated, in line with the requirements of Paragraph 5(3) of Article 5 of The Town and Country Planning (Development Management Procedure) (England) Order 2015.
51. Access to the site would be provided off Taynton Road. The public highway in this location is a relatively straight, long stretch of carriageway, subject to the national speed limit. It is lined on its southern side by a small number of residential properties (including the appeal property), which have direct vehicular access onto the highway. During my site visit, and notwithstanding that this was for a limited duration during a working day, I observed that the road was not heavily trafficked. I also found the road to have good forward visibility lines.
52. There appears to be no recent record of accidents within the area. I also understand that recently conducted speed surveys of the road have led the highway authority to be willing to accept slightly relaxed visibility splays to serve the proposal. Namely, visibility splays of 2.4m x 63m to the east and 2.4m x 73m to the west.
53. I appreciate that existing neighbouring dwellings are not necessarily served by access arrangements with such visibility splays, but this does not convince me that future development should be allowed with sub-standard arrangements.
54. The appellants have though provided a drawing to demonstrate that the requested visibility splays could be achieved. From the details provided and my observations on site, this would necessitate reducing the height of the boundary hedge along much of the site's frontage (within the appellants' control). As such, subject to a condition requiring the provision and maintenance of the required visibility splay I am content that the proposal would not cause harm to highway safety.
55. Consequently, I am satisfied that the proposal adheres to the aim of the Framework in respect of highway safety. Notably, paragraph 111 of the Framework advises that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
56. I have also found no conflict with the Policies of the Gloucestershire Local Transport Plan - 2020-2041 or the Gloucestershire County Council – Manual for Gloucestershire Streets (July 2020), in regard to promoting road safety and supporting the efficient use of the transport network across the authority areas.

57. As indicated above, to provide the required visibility splays it would be necessary to reduce the height of the existing boundary hedge along a considerable length at the frontage of the site. Hedgerows further line either side of Taynton Road for much of its length near the appeal site, contributing to the rural character of the area. I therefore find that the existing mature hedge along the site's boundary, positively adds to the character and appearance of the area.
58. Nevertheless, the need to provide the relevant visibility splays would not necessarily result in its complete loss, rather the need to maintain it at a lower height. Furthermore, the hedgerows along Tibberton Road, vary considerably in terms of their heights, length, densities, as well as size of openings. This is particularly the case for boundary hedgerows located on the southern (residential) side of the road in the immediate area. As such, I do not share the Council's view that works to reduce the height of the hedgerow would undermine the rural character of the area.
59. Consequently, I do not find any conflict with Policies CSP.1 of the Core Strategy or Policies AP.1, AP.4 and AP.8 of the Allocations Plan, in respect of the proposal's impacts on the character and appearance of the area. Together, amongst other matters, these policies support developments that are of a sustainable, high-quality design that supports a sense of place and promote the use of green infrastructure. Likewise, I find no conflict with the Framework in respect of its provisions to protect the character and appearance of the landscape or countryside.
60. Beyond the works to the hedgerow, the Council has not raised any further grounds to refuse the proposal based on its impacts on the character and appearance of the area. Given that the proposal is in outline with all matters reserved for future consideration and would involve the provision of a single dwelling set amongst a row of existing dwellings, I have no reasons to consider differently.

Other Matters

61. I am aware that the appellants have longstanding ties to the appeal property and that the proposed development is intended to provide more suitable accommodation to allow them to continue to live in the area. Be that as it may, I cannot be sure that the proposed development would be used in this manner. In any case, these are personal circumstances which rarely outweigh general planning matters, as the impacts of development would likely remain long after the personal circumstances no longer apply.
62. I also note the appellants' frustrations with the manner that the LPA handled the original planning application. However, this is a matter for the Council to address. The appeal has been determined upon its own merits.

Planning Balance

63. Section 38(6) of the Planning and Compulsory Purchase Act 2004 (the Act) requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise.
64. Whilst I have not been provided with specific details of its shortfall, the Council has acknowledged that it cannot demonstrate a five-year supply of housing land. Paragraph 11d of the Framework is therefore engaged.

65. Engaging the second limb of paragraph 11d, I would consider the most important policies, in respect of the Council's spatial strategy, as out of date. This may affect the weight I would attach to the conflict with these policies but the harms I have found would nonetheless remain. Harm which would lead to conflict with the Framework and to which I would attach significant weight.
66. There is also additional harm associated with the potential impact of the proposal on a priority habitat and species, as well as surface water drainage. The Framework advocates for the protection and enhancement of biodiversity, as well as the provision of suitable drainage arrangements. I therefore also attach significant weight to these harms.
67. Set against the above, the proposal would generate certain socio-economic benefits relating to the provision of a self-build dwelling but given its scale these benefits would be very modest. Consequently, they would be worthy of only limited weight.
68. As such, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The appeal scheme would not therefore be sustainable development for which the presumption in favour applies.
69. That aside, the proposal has the potential to cause harm to the SAC, with no detailed evidence to demonstrate otherwise or suitable mitigation proposed. This would provide a clear reason for refusing the proposed development with regard to the first limb of paragraph 11d, with specific regard to footnote 7.

Conclusion

70. For the reasons set out above, I conclude that the appeal be dismissed.

Lewis Condé

INSPECTOR