



Appeal Decision

Site visit made on 2 November 2023

by C Rafferty LLB (Hons), Solicitor

an Inspector appointed by the Secretary of State

Decision date: 12 February 2024

Appeal Ref: APP/P1615/W/23/3316233

Alans Cottage, Netherend, Woolaston, Lydney, GL15 6NN

- 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 Paul Heal (Heal Homes Ltd) against the decision of the Forest of Dean District Council.
 - The application Ref P0277/22/FUL, dated 25 February 2022, was refused by notice dated 1 March 2022.
 - The development proposed is the erection of 5 dwellings with associated garages, parking, landscaping and works. (Scheme superseding extant permission for one dwelling). Improvements to existing vehicular access and provision of an access way and associated works.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The site address has been taken from the appeal form as this is a more succinct description than that provided with the application. Since the determination of this application the Government published a revised National Planning Policy Framework (the Framework) on 19 December 2023. The main parties have been given the opportunity to comment on this and, where received, their responses have been taken into account.

Main Issues

3. The main issues are: (i) whether the proposal would make appropriate provision for affordable housing; (ii) whether the proposal would comply with Policy AP.112 of the Forest of Dean District Council Allocations Plan 2006 – 2026 (the AP); and (iii) the effect of the proposal on protected species, namely bats.

Reasons

Affordable Housing

4. The site comprises an open field somewhat bordered by trees and hedges, situated off Netherend and close to the residential street of Ashway, within the defined settlement boundary for the village of Woolaston. The proposal seeks to erect 5 dwellings at the site.
5. Policy CSP.5 of the Forest of Dean District Council Core Strategy 2012 (the Core Strategy) states that, in areas other than the four towns at Tutshill/ Sedbury, affordable housing will be sought on sites of 0.16ha or more or accommodating 5 or

more dwellings, with the relevant proportion being 40% of the total number of dwellings.

6. The Framework postdates the Core Strategy but this alone does not prevent it being afforded due weight according to the degree with which it is consistent with the Framework. Paragraph 65 of the Framework states that provision of affordable housing should not be sought for residential developments that are not major developments, being those of 10 or more homes or on sites of 0.5ha or more. However, an exception to this is in designated rural areas, where policies may set out a lower threshold of 5 units or fewer, showing a clear support for the provision of affordable housing in rural areas.
7. The site is located in Woolaston, the parish of which has been designated as 'rural' by the Council and noted as a village in Policy CSP.16 of the Core Strategy. Falling outside of the four towns at Tutshill/ Sedbury, the lower threshold for affordable housing provision in Policy CSP.5 applies in this case. Supporting text to Policy CSP.5 states that these thresholds reflect the nature of the area and intend to enable affordable rural housing where it is most needed, acknowledging that it should be provided where there are at least some basic services, thus suggesting they have been informed by an understanding of the needs and opportunities of rural communities.
8. The proposal would provide a total of 5 dwellings on a site of some 0.4ha. While the appellant had initially claimed that the fallback position of one implemented dwelling on the site results in the uplift being only 4 dwellings, the main parties now agree that this fallback position does not exist. As such, even if I were to accept the appellant's position that a requirement for affordable housing on the basis of site area does not reflect national policy, it remains that a requirement for affordable housing in this designated rural area due to the number of units proposed complies with the Framework.
9. As Policy CSP.5 reflects the provisions of the Framework as it relates to the site insofar as this matter is concerned, it carries significant weight in my consideration of the proposal. In addition, while the information before me is limited, the Council has referred to its local needs assessment for 2,195 new affordable housing units during the period of 2021-2041. This indicates that there is an acute need for affordable housing within the Council area, and there is nothing substantive to suggest that this need is not ongoing.
10. Accordingly, on the evidence before me I am satisfied that the Council is justified in seeking an affordable housing contribution in this case. In accordance with Policy CSP.5, 40% affordable housing units should be provided. However, no such affordable housing is proposed.
11. The Affordable Housing Supplementary Planning Document (the AHSPD) states that applicants will be expected to enter into a legal agreement to provide the proportion of the total number of dwellings that will be sought on site as affordable housing, unless there is a robust justification for reducing this proportion because of impact on economic viability or other acceptable reasons. Although the AHSPD does not make specific reference to the Core Strategy, and even acknowledging the guidance of the PPG that planning obligations for affordable housing should only be sought for residential developments that are major developments, in setting out the Council's overall approach to affordable housing, the AHSPD remains a material consideration in the assessment of the viability of the current scheme.

12. The AHSPD states that where applicants make the case that 40% affordable housing is not deliverable, viability assessments will be undertaken and applicants will be required to submit detailed site finances. It continues that the case must be supported with sufficient detailed supporting evidence when submitting their planning application, which will be validated by independent consultants. Once full information has been received the Council will employ appropriate experts but in the absence of sufficient detail, the Council will assume that viability is not a concern and request the affordable housing.
13. No viability assessment was provided with the application, such that the Council was unable to justify the appellant's departure from the provision of 40% affordable housing units as part of this specific scheme. Such an assessment was later submitted, concluding insufficient headroom to provide affordable housing as part of the scheme. However, as this submission did not occur until the appeal stage, no negotiations with the Council have taken place on its assumptions or findings in accordance with the guidance of the AHSPD. I therefore cannot be certain that it is a fair and accurate reflection of the developer's return or that it represents a sufficiently robust justification for a lack of affordable housing provision. As such, I can only give it limited weight in my consideration of the proposal.
14. For the reasons given, the proposal would fail to make appropriate provision for affordable housing. As such, it would fail to comply with Policy CSP.5 and CSP.16 of the Core Strategy and the provisions of the Framework in this regard. While the refusal reason also refers to Policy AP.112 of the AP, I have examined this below.

Policy AP.112

15. Policy CSP.5 of the Core Strategy states that priority will be given to development on sites identified for housing in the development plan. Policy AP.112 of the AP allocates land off Ashway for 'about 12 dwellings', based on a general calculation of 30 dwellings per hectare. On the evidence, this relates to the site. The figure of 12 dwellings is not a minimum or absolute figure within the policy, and supporting text states that this may be the upper limit, citing an assumption that there will be smaller units. Nevertheless, the Framework is clear that planning policies and decisions should ensure that developments make optimal use of the potential of each site and promote an effective use of land in meeting need for homes and other uses.
16. The proposal would provide a total of 5 dwellings at the site, less than 50% of the quoted figure within Policy AP112 and representing a significant shortfall of 7 dwellings. While the policy wording does not require a minimum of 12 dwellings at the site, it remains that on a normal and reasonable reading of the wording of Policy AP112, a total of 5 dwellings in this location would not be seen as equating to 'about 12 dwellings'.
17. Reference has been made to a planning permission previously granted for a single dwelling at the site, which the appellant argues was seen as acceptable by the Council despite representing a much greater shortfall. However, I have no detailed information on the specifics of that scheme which, on the evidence before me, was granted permission prior to the adoption of the current policy position and has been agreed between the main parties to no longer represent a realistic fallback position. As such, I attach limited weight to this.
18. Overall, while the proposal would still provide a residential use at the site, it remains that the site has been allocated by the Council as capable of delivering a

much greater number of dwellings than proposed. As such, granting permission for the proposal would fail to maximise the potential of the site in delivering the policy aims.

19. For the reasons given, the proposal would fail to comply with Policy AP.112 of the AP and the provisions of the Framework as they relate to effective and optimal use of land.

Protected Species - Bats

20. The Council has raised concerns that the appellant has submitted insufficient information to determine the potential effect of the proposal on protected species, namely bats. However, the appellant submitted a Preliminary Ecological Assessment (PEA) with the application, which was updated once during the application period and a further time as part of the appeal submission. As the Council will have had the opportunity to comment on the PEA and updates I find that they would not be disadvantaged by my taking it into account.
21. The updated PEA acknowledges the potential for development at the site to have an effect on horseshoe bats associated with the nearby Forest of Dean & Wye Valley SAC. However, it concludes that, due to the limited hedgerows on the site the likelihood of such bats to use the site for foraging is limited. The updated PEA then outlines various mitigations measures and opportunities to enhance the ecology of the site. This includes reference to the planting of new native species rich hedgerow planting around the whole site, retention and restoration of existing hedges, limited external lighting at the proposed dwellings, the integration of bat boxes at all proposed dwellings, and the drawing up of a Construction and Environmental Management Plan.
22. In the absence of substantive technical evidence to the contrary, I attach significant weight to the conclusions of the updated PEA. Had the proposal been acceptable in all other respects I am satisfied that the recommended measures of the updated PEA could have been secured by an adequately worded planning condition.
23. For the reasons given, the proposal would not result in a significant adverse effect on protected species, namely bats. As such, it would comply with Policies CSP.1 and CSP.2 of the Core Strategy and Policies AP.1, AP.7 and AP.8 of the AP insofar as they relate to biodiversity and ecology with regard specifically to protected species.

Other Matters

24. The appeal site lies within close proximity to the Wye Valley and Forest of Dean Bat Site Special Area of Conservation and the Severn Estuary Special Protection Area. The Council has stated that insufficient information has been provided to ascertain whether the proposal would have potential significant effects in this regard. The appellant submits that such information has since been made available and refers to solutions found at other nearby sites. However, as I am dismissing for other reasons I do not need to address this further.
25. The appellant has raised various grievances with the conduct of the Council throughout the application and appeal process. However, this has no bearing on my assessment of the planning merits of the appeal.

Planning Balance and Conclusion

26. Paragraph 11(d) of the Framework indicates that where the requisite housing land supply does not exist, permission should be granted unless 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. As the Council are unable to demonstrate the requisite housing land supply, the main parties agree that this test is engaged.
27. The proposal would provide additional housing in a sustainable location within an area with nearby established residential uses, making a modest contribution to the housing mix and supply. As such, I attach moderate weight to this. As outlined above, the proposal would provide some biodiversity enhancements as it relates to protected species, namely bats. Due to the limited scale of the site this attracts moderate weight in support of the proposal.
28. I further note letters of support submitted by interested parties. These outline that the proposal will attract families to surrounding local amenities, including the local school and provide for jobs during construction. It will make use of a site that some deem to be unkempt at the moment, and could assist in deterring parking along Netherend, which currently has the potential to create highway safety issues. These benefits are noted but, again, due to the limited scale of the site and dwellings proposed, and the lack of substantive information on highway safety issues arising from current parking, attract limited weight.
29. However, in relation to the adverse impacts, the harm that would arise regarding the absence of affordable housing provision would be significant, with an evidenced need and support for such housing in rural areas within the Framework. The proposal would also result in significant harm due to its conflict with Policy AP.112 of the AP and failure to make optimal use of the potential of each site and promote an effective use of land in meeting need for homes.
30. Taking account of the above factors, even if I were also to find that the proposal would not result in harm to the integrity of the Wye Valley and Forest of Dean Bat Site Special Area of Conservation or the Severn Estuary Special Protection Area, the adverse impacts of granting permission would not be significantly and demonstrably outweighed by the benefits when assessed against the policies in the Framework taken as a whole. Therefore, the proposal cannot benefit from the presumption in favour of sustainable development. There are no other material considerations to indicate that the proposal should be determined otherwise than in accordance with the development plan.
31. I therefore conclude that the appeal should be dismissed.

C Rafferty

INSPECTOR