



Appeal Decision

Site visit made on 5 March 2024

by O Marigold BSc DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 March 2024

Appeal Ref: APP/G1630/W/23/3323753

**Cuckoo Farm, Southam Lane, Southam, Cheltenham, Gloucestershire
GL52 3PE**

- 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 Stephen Pope against the decision of Tewkesbury Borough Council.
 - The application Ref is 22/00692/FUL.
 - The development proposed is replacement of agricultural dwelling, landscaping and other associated works at Cuckoo Farm.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. As part of the appeal, the appellant has provided an amended plan showing a revision to the application site boundary, to now include the existing dwelling. This amendment does not change the position of the proposal, and the land involved was previously shown as being within the same ownership. As such, I am satisfied that no party would be prejudiced by determination of the appeal using the amended site plan.
3. I have used the description of the proposal as set out in the Council's Decision Notice, which is more concise than that used in the application form. The appellant has used this revised description in the appeal form and so its use would not prejudice any party.
4. During the appeal, the Cotswolds Area of Outstanding Natural Beauty, within which the site lies, was renamed as a National Landscape. I have therefore used this term in my decision. However, the legal and planning policy status of the designation is unchanged and so this does not affect the parties' cases.

Main Issues

5. The main issues are:
 - whether the proposal would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies, including in respect of the openness of the Green Belt,
 - the effect of the proposal on the character and appearance of the area,

- whether an agricultural functional justification for the proposal is necessary and, if so, whether it has been demonstrated,
- whether the proposal makes adequate provision for energy efficiency,
- the effect of the proposal on protected species, in particular bats, and
- if the proposal is inappropriate, whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons

Inappropriate Development and Openness

6. The site lies in countryside within the Gloucestershire Green Belt. Paragraph 154 of the Framework makes clear that the construction of new buildings is inappropriate in the Green Belt. Relevant to this appeal, an exception to this includes Paragraph 154(d) for the replacement of a building, provided the new building is not materially larger than the one it replaces. In addition, Paragraph 154(g) permits the redevelopment of previously developed land, where it would not have a greater impact on the openness of the Green Belt.
7. Policy SD5 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (JCS), adopted December 2017, states that to ensure that the Green Belt continues to serve its key functions, it will be protected from harmful development and restricted to those deemed appropriate by the Framework, unless very special circumstances can be demonstrated. JCS Policy SD5 is therefore consistent with the Framework.
8. The appellant has referred to saved Policy HOU7 and an appeal decision¹ judged against it. However, this policy has now been superseded by Tewkesbury Borough Local Plan (TBLP), adopted June 2022, and no conflict with the policy is alleged. Consequently, I need not consider it further.
9. The proposed dwelling would be located away from the footprint of the existing dwelling. As a result, it is necessary to establish whether the proposal constitutes a replacement building. Where a replacement dwelling would be outside of the existing curtilage, TBLP Policy RES9 requires that a legal agreement is entered into to secure demolition of the existing dwelling. No such agreement is before me, and the Council's third refusal reason is based on the proposal being an additional dwelling, not a replacement.
10. However, demolition of the existing dwelling could alternatively be secured by means of a condition. As such, there would be sufficient control available to the Council to prevent both dwellings permanently existing at the site. Accordingly, I have considered the proposal on the basis that the existing dwelling would be demolished. Therefore, the alleged conflict with JCS policies SD4, SD5 and SD10, and TBLP policies RES9 and AGR3 from two dwellings at the site would not arise.
11. The Court decision at *Tandridge*² confirms that the test of 'materially larger' in Framework Paragraph 154(d) may be judged not just by floorspace comparison

¹ APP/G1630/W/15/3140970

² *Tandridge DC v SoSCLG*, [2015] EWHC 2503 (Admin)

but also with reference to other factors which may affect openness. *Turner*³ confirms that this may include visual impact. A significantly larger replacement floorspace would not necessarily result in a materially larger building, as was the case in *Feather*⁴, for example because of the inclusion of a large basement.

12. In this case, visually, some views of the proposal would be seen against the backdrop of adjacent buildings at Kayte Farm, as well as in conjunction with the large agricultural barn approved in 2019. Sports facilities including floodlighting are also located nearby. However, the existence of other built form in the area only increases the importance of limiting further development in the Green Belt. Existing trees and hedgerows filter obtainable public views of the site, as would the proposed enhanced landscaping, although there may still be glimpsed views of the proposal from a nearby public right of way.
13. Spatially, the site of the proposed replacement dwelling consists mainly of hardstanding and green space, which is largely open and absent of buildings. The proposal would introduce a replacement dwelling with additional built form. Based on the dimensions provided by the appellant, the proposal would have a larger footprint than the existing dwelling, and its floorspace would increase by over a third. No below-ground areas are shown, and the proposal would be notably taller than the existing dwelling.
14. As such, the size, mass and scale of the proposed dwelling would be appreciably larger than the existing building. I therefore conclude that it would be materially larger than the one it replaces. In addition, notwithstanding the position of the barn, relocation of the dwelling as proposed would also result in residential built form encroaching further into the countryside than at present, thus conflicting with one of the purposes of the Green Belt.
15. Given my findings on the size, mass, scale and location of the proposal, it would have a greater harmful effect on the openness of the Green Belt than the existing dwelling. Consequently, even if the site were to constitute previously developed land, the proposal would not accord with Framework Paragraph 154(g).
16. For the reasons given above, the proposal would not comply with Framework paragraphs 154(d) or 154(g) and so would amount to inappropriate development having regard to the Framework and the relevant development plan policies. This is, by definition, harmful to the Green Belt. It would also have a harmful effect on the openness of the Green Belt. Accordingly, it would conflict with JCS Policy SD5.

Character and Appearance

17. The design of the proposal includes close mitred valleys, dormer windows of differing sizes and gable walls on each elevation, including a catslide roof feature. The proposal would use a range of external facing materials including stone, render, brickwork, boarding and concrete tiles.
18. The design is said to be similar to the existing dwelling and to reflect local distinctiveness. The replacement dwelling would have space around it and so would acceptably reflect the size of the proposed plot. However, the resultant

³ *Turner v SSCLG & East Dorset Council* [2016] EWCA Civ 466

⁴ *Feather v Cheshire East Borough Council v Mr Christopher Wren and Mrs Susan Wren* [2010] EWHC 1420 (Admin)

building would have an overly complicated mix of design features and external materials which, in combination, would appear confusing and convoluted. As a result, it would not reflect the relatively simple form of the existing dwelling and there is little to suggest that it would respect the scale and appearance of characteristic properties in the area.

19. The Council's first reason for refusal refers to harm to the landscape. However, the appellant's undisputed Landscape and Visual Impact Assessment finds that the proposal would read as a peripheral feature in the wider landscape. Many of the trees important to the site would be retained, and conditions could be used to secure the additional soft landscaping proposed. Therefore, I conclude that the proposal would have an acceptable impact upon the National Landscape.
20. Nevertheless, because of the design of the proposal, I conclude that it would harm the character and appearance of the area. As such, it would conflict with JCS policies SD4, SD10, and TBLP Policy RES9, which require a positive response to the character of the site and its surroundings, and a good standard of design. It would also conflict with the similar aim of the Framework. However, given my findings in relation to the wider landscape, the proposal would not conflict with TBLP Policy ARG3 in this respect.

Agricultural Justification

21. The existing dwelling is subject to an agricultural occupancy condition, and the proposal seeks that the replacement dwelling would be similarly restricted. Paragraph 3.51 of TBLP Policy RES9 refers to replacement agricultural dwellings and states that they will be subject to the relevant provisions of TBLP Policy AGR3 for new agricultural dwellings. Whilst the proposal would be a replacement dwelling, it would also be 'new' because it does not currently exist. Therefore, the tests of Policy ARG3 must be applied to the proposal, including in relation to essential functional agricultural need.
22. The occupiers intend to continue farming land in and around Southam. However, little evidence is before me to show that there is an essential functional need for the proposed larger dwelling. I understand the desire of the appellant to improve their living standards, but this does not of itself amount to an essential functional need for the proposal. In the absence of evidence to the contrary, I am concerned that the proposed increase in size could affect the affordability of the accommodation for rural workers and its availability to them in the future.
23. The appellant has referred to Stone House Farm, another agricultural worker's dwelling nearby. As a result of a recently approved garage, its floorspace is said to exceed that of the proposal. However, I do not have full details of that case or its justification. Furthermore, as it did not involve a replacement dwelling, the relevant planning policy and other considerations may well have been different. It does not therefore lead me to reach a different conclusion about the proposal before me.
24. For these reasons, I conclude that an agricultural functional justification for the proposal is necessary but has not been demonstrated. As such, the proposal would be contrary to TBLP policies RES9 and ARG3.

Energy Efficiency

25. JCS Policy SD3 requires that proposals demonstrate how they will contribute to the aims of sustainability, including by increasing energy efficiency. Few details have been provided to demonstrate how the proposal would meet this requirement, for example in the provision of photovoltaic panels, air source heat pumps or the orientation of the dwelling.
26. Such measures could have implications for the design or location of the building and so could affect, amongst other things, the character and appearance of the area. Accordingly, in the absence of further details, I cannot safely leave this matter to a planning condition. As such, the proposal would not make adequate provision for energy efficiency and so would conflict with JCS Policy SD3.

Bats

27. The site is located in countryside, meaning that the loft space of the existing dwelling and nearby trees have a reasonable likelihood of providing a habitat for bats. The appellant states that the presence of bats has not been observed within the loft and that the property is not suitable for them. However, I have no substantive evidence to corroborate this, such as a survey undertaken by a qualified ecologist.
28. Consequently, on the evidence available to me, I cannot be satisfied that the proposal would have an acceptable effect on protected species, in particular bats. Accordingly, it would conflict with TBLP Policy NAT1. This seeks to conserve biodiversity and to avoid the loss of important habitats or species, other than in circumstances that do not apply here. However, I find no conflict with JCS Policy SD14, which focuses on human health.

Other Considerations

29. The Council accepts that it cannot currently demonstrate an adequate supply of housing land. However, the proposal would not increase the number of dwellings and so would not add to the supply of housing. As such, paragraph 11(d) of the Framework is not engaged. The proposal is for a self-build dwelling and so would add to their supply, for which there is said to be a shortfall within the District. However, as just a single dwelling I give this benefit only limited weight.
30. The proposal would have economic benefits, for example to the building industry, and would make more efficient use of the land. Nevertheless, given the small size of the proposal, I give these benefits only limited weight. The proposed landscaping may result in habitat creation and enhancement, but few details have been provided to me. I can therefore give this only very limited weight.

Planning Balance and Conclusion

31. The proposal would cause harm to the Green Belt by reason of inappropriateness and a reduction in its openness. These both separately attract substantial negative weight. I also attach significant negative weight in respect of each of the effect of the proposal on the character and appearance of the area; on agricultural worker's accommodation; energy efficiency; and bats.

32. For the reasons already given, the benefits of the proposal attract only limited or very limited weight. I have found that the proposal would not harm the National Landscape, but this is a neutral factor rather than a positive benefit of the proposal. I therefore find that the other considerations in this case do not clearly outweigh the harm that I have identified. Consequently, the very special circumstances necessary to justify the proposal do not exist.
33. For the reasons given, I have found conflict with the Development Plan as a whole. The material considerations in this case do not indicate a decision other than in accordance with the Development Plan. This leads me to conclude that the appeal should be dismissed.

O Marigold

INSPECTOR