



Appeal Decision

Site visit made on 20 February 2024

by Tamsin Law BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 April 2024

Appeal Ref: APP/G1630/W/23/3330290

Court Farm, Tewkesbury Road, Twigworth GL2 9PX

- 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 S Gorman against the decision of Tewkesbury Borough Council.
 - The application Ref 22/00975/OUT.
 - The development proposed is described as "outline application with all matters reserved for 3no. dwellings."
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. There was no site address on the application form, I have therefore taken the address from the appeal form which accurately reflects the location of the site.
3. The application is made in outline with all matters reserved for future consideration.

Main Issues

4. The main issues are;
 - Whether or not the appeal site would be a suitable location for the proposed development, having regard to development plan policy and the National Planning Policy Framework (the Framework); and
 - The effect of the proposed development on biodiversity.

Reasons

Location

5. The appeal site comprises an area of cleared land laid to hardcore. It is my understanding that prior to the clearance and laying of hardcore, the site was historically an area of agricultural land, which during my site visit formed part of a wider area used to site caravans. The appeal site is bound by a hedgerow and bund to its street frontage, and a bund to its sides.
6. The appeal site is located to the north east of the settlement boundary associated with Twigworth, the main built up part of which lies to the south west of the appeal site. As a result, the site lies outside of the development boundary of Twigworth. The proposed development would not be immediately adjacent to the settlement boundary, is not allocated for housing, and would

not fall within any of the exceptions set out by the development plan to enable new development in the open countryside. No other policies would support the construction of three dwellings in this location. Furthermore, it would not meet the definition of an infill site, as set out in the development plan.

7. The site is in a fairly sustainable location, with access to a range of services and facilities achievable by means other than the private car. The strategic allocation to the south of Twigworth is under construction, which will provide a local centre and a primary school, and the associated benefits this would bring. However, despite the sustainability credentials of the site, the site remains classed as open countryside and would not be a suitable location for the proposal, having regard to the development strategy for the area.
8. The proposed development would therefore conflict with Policies SP2 and SD10 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011-2031 (JCS) (2017), Policy RES3 of the Tewkesbury Borough Local Plan 2011-2031 (LP) and Policy D2 of the Down Hatherley, Norton and Twigworth Neighbourhood Development Plan 2011-2031 (NDP). Together these seek to guide development to the most sustainable and accessible locations and supports housing development where it would be within or immediately adjacent to the settlement boundary of Twigworth

Biodiversity

9. During my site visit I noted that the appeal site had largely been cleared of vegetation and had been laid to hardcore. Along the frontage of the site runs a hedgerow along with a bund that appeared to be made from vegetation, such as grass, tree cuttings and logs. This bund also extended along the western boundary of the site.
10. The Council's concerns relate to Great Crested Newts (GCNs). GCNs are a protected species under the Conservation of Habitats and Species Regulations 2017 (as amended) (the Habitats Regulations). GCNs are also of 'principal importance' under the Natural Environment and Rural Communities Act 2006 (the NERC Act).
11. No ecological information has been submitted in support of the appeal. Standing advice by Natural England¹ explains that a survey should be produced where records suggest that GCNs may be present and there is a suitable water body up to 500 metres from the development. The advice goes on to state that a survey should be provided if the development site includes refuges, such as log piles, rubble, grassland, scrub, woodland or hedgerows up to 500 metres of suitable aquatic habitats.
12. The Council have provided a map detailing a number of ponds and GCN records within a 500 metre radius of the appeal site. The appellant has disagreed with this map, detailing that some of the ponds do not appear to be in existence, and that the appeal site, being laid to hardcore, would not provide a suitable habitat for GCNs. Whilst I have had regard to this, their submission does detail that a pond exists in a nearby residential garden. I have no evidence to disagree with the Council's finding in relation to nearby GCN records.
13. Given the proximity of a pond to the appeal site, along with nearby GCN records, the proposed development could impact on GCNs, including their

¹ Great crested newts: advice for making planning decisions (2022)

terrestrial habitats. Whilst the site has been laid to hardcore the hedgerow and vegetation bunding could provide suitable refuges for GCNs. I consider that the additional surveys including mitigation and compensation measures is necessary in order to establish the likely effects of the proposal on GCNs.

14. Circular 06/2005² 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. On the basis of the evidence before me, I do not consider that it would be appropriate to condition 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 GCNs.
15. I have had regard to the appellants comments regarding the planning history of the site, the previous appeal decision³, and that the Council have not previously raised concerns regarding biodiversity. Whilst it is unfortunate that this has not been previously raised, as the evidence demonstrates nearby GCN records and potential refuges are located on the appeal site, the absence of previous concerns by the Council is not sufficient justification to allow the appeal without the appropriate surveys.
16. In light of the above, I am not satisfied that sufficient evidence has been provided in order to ascertain the effects of the proposed development on GCNs. Having regard to my duty under the Habitats Regulations and the NERC Act, I conclude that the proposal fails to demonstrate that its effects on the biodiversity of the site and the surrounding area would be acceptable. The proposed development is therefore contrary to JCS Policy SD9 and LP Policy NAT1 which seek, amongst other things, to ensure that developments identify, protect, enhance and expand environmental assets. The proposal would also be contrary to Paragraph 186 of the Framework which seeks to ensure that proposals conserve and enhance biodiversity.

Other Matters

17. Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) requires special regard to be had to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest which it possesses when dealing with planning applications. Court Farm, to the east of the appeal site includes a Grade II listed farmhouse and barn. I have had regard to a previous appeal decision where the Inspector stated that, due to alterations to the buildings and surrounding area, the setting of the listed buildings are now best experienced from their enclosed farmyard setting and concluded that whilst there would be a degree of intervisibility between the appeal site and the listed buildings, a small scale, modern housing scheme would not be incongruous to the setting of the listed buildings. Based on the evidence before me and what I saw during my site visit I have no reason to disagree with this assessment. As such, the proposal would not have a harmful effect on the setting of the listed buildings.

Planning Balance

18. There is no dispute that the Council cannot currently demonstrate a 5-year supply of housing land in its area. The Council quotes a housing land supply of

² Biodiversity and geological conservation: circular 06/2005

³ APP/G1360/W/22/3302403 dismissed 29 November 2022

some 3.23 years. As such, planning permission for the proposed development should be granted unless, under Framework Paragraph 11.d) 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.

19. The Framework sets out the Government's objective of significantly boosting the supply of homes. Given the housing shortfall in the Council's area, the proposed residential units, would make a valuable contribution to housing supply on a small site where there is good access to a range of services, facilities and employment opportunities. The proposal has received some local support in these respects. Framework Paragraph 70 states that small sites can make an important contribution to meeting housing requirements and are often built-out relatively quickly. In this context the appeal proposal's contribution to the supply of housing weighs in its favour.
20. Furthermore, construction and occupation of the proposed development would generate short-term employment opportunities and economic activity, together with long-term economic and social benefits through the new resident households supporting businesses, facilities and services within the area. Nevertheless, these benefits would be limited by the scale of the proposed development.
21. The adverse impacts of the proposal would be confined to the harm I have identified in relation to GCNs. This would result in conflict with Paragraphs 180 and 186 of the Framework, which state that development should minimise impacts on biodiversity and local planning authorities should refuse planning permission if significant harm to biodiversity cannot be avoided, adequately mitigated, or, as a last resort, compensated for. In having regard to my duties in respect of the Habitats Regulations and the NERC Act, I attach substantial weight to this harm and the conflict with the Framework.
22. The proposal's adverse impacts identified above would therefore significantly and demonstrably outweigh the benefits identified when assessed against the policies in the Framework taken as a whole. Consequently, the proposed development does not benefit from the Framework's presumption in favour of sustainable development.

Conclusion

23. The proposal would be contrary to the development plan as a whole and there are no other material considerations, including the approach of the Framework, which outweigh this finding. I therefore conclude that the appeal should be dismissed.

Tamsin Law

INSPECTOR

