



Appeal Decision

Site visit made on 5 March 2024

by P N Jarratt BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 April 2024

Appeal Ref: APP/F1610/W/23/3326341

The Closes (field name), Forty Lane, Little Rissington, Cheltenham, GL54 2ND

- 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 Ms Stephanie Lane against the decision of Cotswold District Council.
 - The application Ref 22/04144/FUL, dated 21 November 2022, was refused by notice dated 24 January 2023.
 - The development proposed is a low carbon energy efficient self-build affordable dwelling (associated works including landscape and biodiversity enhancement and improvements to existing vehicular access).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. As the National Planning Policy Framework (the Framework) was revised on 19 December 2023, after the date for the submission of statements of case, the parties were invited to comment on any changes relevant to their cases.
3. The appellant has drawn attention to s123 of the Levelling up and Regeneration Act 2023 and associated 2024 Regulations which amended the 2015 Self-Build Act.
4. The appellant has submitted an executed Unilateral Undertaking (UU) to restrict the occupation of the property to qualifying persons.

Main Issues

5. The main issues in this case are:
 - i) whether the principle of residential development of the site accords with development plan policies or meets the requirements for exceptions to these policies;
 - ii) whether the proposal would conflict with the purpose of conserving and enhancing the natural beauty of the landscape;
 - iii) the effect that the development would have on the character and appearance of the Conservation Area, on the setting of the listed buildings, and on features of archaeological interest.
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- iv) the effect of the development on local ecology and in particular, the great crested newt.

Reasons

- 6. The application site lies in the Cotswolds Area of Outstanding Natural Beauty (AONB) and within the Little Rissington Conservation Area. It is a parcel of agricultural land bounded by a road or fields on three boundaries and one boundary is open. A copse of trees, a pond and a corrugated metal roofed outbuilding with new stone gables are located on the west part of the site. The ground falls gently towards the pond from a walnut tree located on the northeast of the site close to the roadside hedgerow. The appellant states that the site is in a mixed use of agriculture and amenity land.
- 7. The proposed development relates to the erection of a two bed, two storey, detached dwelling located about 18m to the west of Forty Lane from where vehicular access would be gained, as at present. The dwelling would be about 13m x 5.5m x 8m high constructed in natural stone with artificial stone roof slates.
- 8. The dwelling is proposed to be an affordable self-build dwelling in accordance with the criteria set out in the Self-Build and Custom Housebuilding Act 2015 and to be a low carbon energy efficient dwelling.
- 9. The Grade II* listed church of St Peter is about 100m west of the site and there is a group of Grade II listed buildings at (Brushwood Barn and Wisteria Cottage) about 25m away.
- 10. There has been recent residential development on the east side of Forty Lane and development on the Church Farm Estate.
- 11. A similar application to that subject to this appeal was withdrawn prior to determination but the current appeal is supported by additional detailed information.

The Principle of Development

- 12. Policies in the Cotswold District Local Plan 2011-2031 seeks to resist new build open market housing outside principal and non-principal settlements unless it is in accordance with other policies that expressly deal with residential development in such locations such as Policy DS3. The Council considers the appeal site to be outside these categories of settlements and that it does not meet the requirements of Policy DS3.
- 13. The appellant's case is that the proposal satisfies Policy DS3 as it is of proportionate scale and maintains a sustainable pattern of development; that it complements the form and character of Little Rissington; and, that it will not have an adverse cumulative impact when read with other village developments. However, as the appellant recognises, the difference between the parties is that the Council considers the site to be outside the village whereas the appellant believes the site to be within the village, and that this is a matter of planning judgement. I am satisfied that the site whilst being adjacent to the village, is not within Little Rissington for the purposes of Policy DS3 but nor is it an isolated site. The reasoned justification (paragraph 6.3.5) refers to care being taken that development does not harm open spaces or gaps that make a positive contribution to the character of the village including views and vistas.

It is clearly debatable whether the proposed development complements the form and character of the settlement in view of my findings in respect of the effect on heritage assets set out later in this decision.

14. The Council indicates that there is a 6.9 year supply of deliverable housing land but the appellant disputes this and considers the supply to be between 3 and 3.55 years as past over-supply should not be counted. Various appeal decisions and a High Court Judgement¹ are cited in support of the appellant's arguments.
15. Even were I to accept the appellant's arguments in respect of the supply of land and that policies most important for determining the application are out of date, there are policies in the Framework that protect assets of particular importance as referred to in paragraph 11, footnote 7 which outweigh housing land supply arguments. I therefore attach limited weight to these arguments.
16. However whilst there is a strong policy presumption against the erection of new build open market housing on the land, the appellant wishes to erect a self-build dwelling and the Council has a duty to provide an adequate supply of plots to meet demand which is established by reference to the number of entries on the Council's register. The Council has until 30 October 2024 to meet the needs arising from the 2021-24 base period. The Council indicates that it has met its previous requirements to provide an adequate supply of self-build plots and is making reasonable efforts to address the issue.
17. Local Plan Policy H3 deals with rural exception sites which would allow a single self-build plot within, adjoining, or closely related to the built up areas of villages where the appellant meets a number of criteria, which includes the appellant to be in housing need; cannot access a suitable home on the open market within 5km of the site; has a need to live locally and has strong connections with the parish.
18. The applicant lives in her parent's property as a concealed household in Bourton-on-the-Water and her family has a long association with the site through ownership. The appellant has submitted information to demonstrate that she is in housing need and satisfies the requirements of Policy H3.
19. The appellant has met the eligibility criteria for Part 1 of the Self Build Register, and the executed UU indicates that

"The dwelling will be built and completed by a person or persons in accordance with "the definition" of self-build and custom build housing as defined in the National Planning Policy Annex 2 Glossary (or its equivalent in replacement national policy). The dwelling shall not be built or completed other than in accordance "the definition," and shall not be built or completed in contravention of the definition in Section 1(A1) and (A2) of the Self-build and Custom Housebuilding Act 2015 (as amended)"
20. I note that a third party raises a question over whether what is proposed is a genuine self-build but I am satisfied that the appellant's proposal falls within an acceptable category of self-build development bearing in mind the requirement of the UU and the guidance from the Right to Build Task Force.
21. Reference is also made to the aspiration to create a low carbon energy efficient dwelling. The Design and Access Statement refers to a wide range of

¹ Tewksbury BC and SoSHCLG and JJ Gallagher and Richard Cook [2021] EWHC 2782 (Admin)

sustainability measures being considered and solar photovoltaic cells are proposed for the roof of the barn, The appellant seeks to achieve Passivhaus standards and an appropriately worded condition could be imposed to require the submission of a scheme to demonstrate compliance.

22. I conclude on the first issue that the principle of residential development of the site is resisted by the residential development policies in the development plan but in exception to these policies, it satisfies Policy H3 in respect of single self-build plots to which I attach significant weight. I also attach some weight to the aspiration to create a low carbon dwelling.

The AONB

23. Under s85(1) of the Countryside and Rights of Way Act 2000, I am required to have regard to the purpose of conserving and enhancing the natural beauty of the landscape.
24. The site and the surroundings are sensitive to change by virtue of the AONB setting and the edge of village location. The village is a settlement with a scattered built development pattern and a patchwork of green spaces which contribute to its rural character. The development of the appeal site would result in a discernible encroachment of built form into the open countryside.
25. The appellant has submitted an LVIA in which it is concluded "With the implementation of a successful mitigation strategy, the overall impact on the landscape is considered to have a minor/moderate overall effect on the surrounding landscape character and a minor effect on the visual baseline." Whilst I agree with the view that landscape change does not equate to landscape harm, the development would have an urbanising impact on the character and appearance of the area and detract from the rural setting of the village within the AONB landscape.
26. There has been recent residential development on the east side of Forty Lane and also development to the north of the site. However the appeal site can be distinguished from these other developments as the site retains its intrinsic landscape qualities and connects visually with the wider agricultural landscape to the north. Its development would not accord with Local Plan Policies EN4 and EN5 for the protection of the countryside and the AONB, nor with paragraphs 180 and 182 of the Framework.
27. I conclude on this issue that the proposal would fail to achieve the purpose of conserving or enhancing the natural beauty of the designated landscape.

Heritage

28. I have a duty under s66(1) of the Planning (Listed Building and Conservation Areas) Act 1990 to have special regard to the desirability of preserving a listed building or its setting or any features of special architectural or historic interest it possesses. In respect of development in the conservation area, I have to pay special attention under s72(1) of the same Act to the desirability of preserving or enhancing the character or appearance of that area.
29. The site is about 100m to the east of the Grade II* listed Church of St Peter and in an open rural landscape setting and is distinctive by its physical detachment from its setting. The appeal site is part of this setting and the open land also contributes to the setting of the Grade II listed Brushwood Barn and

Wisteria Cottage to the south east. The Council points out that the appeal site has been deliberately drawn into the conservation area due to its integral nature in the distinctive character of the village and church. Whilst the appellant's heritage advisor takes exception to this, having inspected the site it appears to be an eminently sensible conclusion to draw. The appeal site makes a positive contribution to the significance of the heritage assets.

30. The appellant has submitted a detailed Heritage Statement. The statement concludes that the proposals would constitute a minor change to the setting of heritage assets occupying only a fraction of the rural village setting considered to inform the importance of the assets. It is also concluded that there will be no perceivable effect on the Grade II buildings due to existing boundaries and vegetation. Overall it is considered that the proposals would result in no harm to the significance of the conservation area or listed buildings.
31. However, the proposed dwelling would intrude upon the open land and change its character from a rural paddock to a residential site with associated domestic paraphernalia and activity which would fundamentally alter the existing built boundary of the village and the relationship of the appeal site to it. The open rural setting of the Grade II* church is of significance to the distinctive isolation of the church and it also forms the backdrop to the historic northern margin of the village. Its setting would be adversely affected. Although more recent development has contributed to a change in the setting of the listed buildings and to the character and appearance of the conservation area, the extent of any resultant change is relatively marginal in comparison to the harmful impact that the appeal proposal would have on the setting the church, notwithstanding the established vegetation on the appeal site, although there would be no significant harm to the setting of the Grade II listed buildings due to existing vegetation.
32. The proposed development is considered by the Council to be somewhat of a hybrid design which does not represent the modest Cotswold vernacular appearance. Although such matters require a planning judgement to be made, I find that whilst dwelling is a thoughtful design, it would not be the most appropriate one for the site due to its alignment and fenestration.
33. Historic England has expressed concern about the impact on the setting of the church in which they comment that the church with its squat tower has a strong degree of primacy in the landscape and the proposed development would affect these views from both the lane and the churchyard.
34. The proposed dwelling has the potential to impact significant archaeological remains which relate to a deserted medieval village. The submitted Heritage Statement does not address this issue and further information is required to assess the potential impact, as set out in paragraphs 200 and 201 of the Framework. However such information could be required before development commences by way of an appropriate condition.
35. I have had regard to the other developments in the village raised by the appellant, including the new dwellings on Forty Lane and the development of Woodgrove adjacent to the footpath to the church.
36. I therefore conclude that the proposed development fails to preserve the character and appearance of the conservation area and is harmful to the setting of the listed buildings. I consider the level of harm to be less than

substantial to the significance of the designated heritage assets as set out in paragraph 208 of the Framework. Although this needs to be weighed against the public benefits of the proposal, such benefits are limited in that the addition of this site for a single dwelling Council would have minimal impact on the supply of housing land and the provision of a single self-build unit would not outweigh the harm to the designated heritage assets. It would be contrary to Local Plan Policies EN10 and EN11 and the Framework in respect of heritage assets.

Ecology

37. The Council does not consider that sufficient information has been submitted to establish that the proposed development would not have an adverse impact on Great Crested Newts or their habitats. In particular, the submitted Ecology Report does not outline an appropriate mitigation and compensation strategy. It does however state that a precautionary approach would be implemented and that a low impact licence obtained from Natural England in order for the works to proceed lawfully.
38. The appellant has suggested that a pre-commencement condition could be imposed requiring the submission of a Construction Environmental Management Plan which should include a Reasonable Avoidance Method Statement. I am satisfied that that such a condition would ensure that the protected species and its habitats is protected and enhanced.

Other Matters

39. I have had regard to the matters raised by the appellant including the various appeal decisions submitted and I note that there are no issues relating to highway, residential amenity or other matters material to the appeal.
40. There have been a number of objections made against the proposal, including one from the Parish Council, but there have also been a number of letters of support.

The Unilateral Undertaking

41. The executed UU confirms that the dwelling would be occupied by a qualifying local person and remain affordable in the sense that it would be lower than market value upon future disposal.
42. The Council has concerns over the UU not requiring the first occupant to meet the qualifying persons criteria and that the applicant does not meet the local connection criteria. However this appears to contradict the evidence submitted by the appellant. Furthermore, although the future sale value would be discounted the 60% price restriction would be unaffordable to a qualifying person. However this appears to be an unavoidable consequence of local market conditions.
43. The restrictions on occupancy and price could appropriately be the subject of a condition, and the Framework advises that planning obligations should only be used where it is not possible to address unacceptable impacts through a planning condition.

Planning Balance

44. The planning balance tips firmly against the development by reason of the harm it would cause to designated heritage assets and to a lesser extent to the natural beauty of the landscape. Although the proposal would satisfy Policy H3 in respect of exception sites, and issues relating to low-carbon standards, occupancy/affordability, archaeology and ecology could be the subject of appropriately worded conditions, these do not outweigh the harm that I have identified to the heritage assets.

Conclusion

45. I conclude that the development would be contrary to Local Plan Policies primarily relating to the location of residential development including DS3, to EN4, EN5, EN10 and EN11 and would also be contrary to the Framework. identified.

P N Jarratt

INSPECTOR