



Appeal Decision

Site visit made on 9 April 2024

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 April 2024

Appeal Ref: APP/F1610/W/23/3324547

Land at Harnham Lane, Withington, Cheltenham

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant permission in principle.
 - The appeal is made by SPM Homes Ltd against the decision of Cotswold District Council.
 - The application Ref 23/00603/PLP, dated 20 February 2023, was refused by notice dated 5 May 2023.
 - The development proposed is permission in principle for up to two dwellings.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Planning Practice Guidance (PPG) advises that permission in principle is an alternative way of obtaining planning permission for housing-led development. The first stage establishes whether a site is suitable in-principle, whereas the second technical details consent stage is when detailed development proposals are assessed. This application relates to the first of these two stages.
3. The scope of the considerations for such applications is limited to location, land use and amount of development. All other matters are considered as part of the second stage if permission in principle is granted. The proposal is for up to two dwellings. The drawings submitted show alternative schemes for two dwellings and a single dwelling respectively. These are provided for illustrative purposes, and I have determined the appeal accordingly.
4. The National Planning Policy Framework (the Framework) was revised on 19 December 2023 and is a material consideration in this decision. Having regard to the matters that are most relevant to this appeal, there have been few substantive changes albeit that the numbering of paragraphs has changed. Furthermore, the main parties have had the opportunity to comment on the revised Framework. Hence, I am satisfied that no one would be prejudiced by this change to the national policy context.

Procedural Issues

5. Certain types of development are excluded from the grant of permission in principle. Development which is habitats development is one such exclusion¹, and is defined as including development which, discounting mitigation measures, is likely to have a significant effect on a qualifying European site

¹ Article 5B(1) of the Town and Country Planning (Permission in Principle) Order 2017 (as amended)

under the Conservation of Habitats and Species Regulations 2017 (as amended) (hereafter referred to as the Habitats Regulations). In these circumstances, an appropriate assessment should be undertaken at the outset to establish whether the development would adversely affect the integrity of the protected site. If the outcome of the appropriate assessment is unfavourable it would preclude the grant of permission in principle, and it becomes unnecessary to consider any further matters.

6. The Cotswold Beechwoods Special Area of Conservation (SAC) is a European designation recognised by the Habitats Regulations. The SAC consists of ancient beech woodland, some secondary woodland and a small area of unimproved grassland. Evidence in the Cotswold Beechwoods SAC Recreation Mitigation Strategy (the mitigation strategy) indicates that public access is having an adverse effect on the habitat of the SAC owing to trampling, erosion, fire risk and contamination. Visitor surveys show people living within 15.4km of the SAC are more likely to visit it for recreational purposes. It follows that additional residential development within that zone would have occupants likely to increase adverse recreational pressure on the SAC.
7. The appeal site lies within 15.4km of the SAC. Hence, in the absence of any mitigation, the proposal for up to two new dwellings would be likely to increase recreational pressure and an adverse effect on the integrity of the SAC cannot be ruled out.
8. The mitigation strategy has been jointly prepared by the Council, with neighbouring Councils and Natural England to strategically address the harm arising from recreational pressure. This includes costed measures for Strategic Access Management and Monitoring (SAMM) to manage visitors to the SAC, and for example, relate to staffing and signage. In addition, Suitable Alternative Natural Greenspace (SANG) or other infrastructure projects are proposed to be provided to deflect such pressure away from the SAC. The mitigation strategy sets out the level of developer contributions necessary per dwelling for SAMM, and in relation to smaller developments, for SANG/infrastructure projects.
9. A signed and dated agreement under section 111 of the Local Government Act 1972 has been submitted reflecting a payment of £1,471 towards recreational impact mitigation at the SAC, as detailed in the mitigation strategy. The appellant has confirmed that the amount has been paid. There is no dispute between the parties that the money would be spent on measures identified within the mitigation strategy and that this would proportionately address the adverse impact that would arise from the proposal.
10. Furthermore, Natural England² has confirmed that the measures proposed would be sufficient to avoid or reduce impacts to maintain the integrity of the SAC and its qualifying features. Given their specialist knowledge, this attracts considerable weight.
11. Therefore, I am satisfied having undertaken an appropriate assessment that the proposal, either alone or in combination with other schemes, would have no adverse effect on the integrity of the SAC as there is sufficient certainty that adequate mitigation is secured. On this basis, the proposal would not constitute

² Email dated 13.2.24

habitats development, and can be considered under the permission in principle procedure.

Main Issue

12. The main issue is whether the site is suitable for the proposal in terms of location, land use and amount of development having regard to the effect on the Cotswolds Area of Outstanding Natural Beauty (referred to as either AONB or the Cotswolds National Landscape) and relevant policies in the development plan.

Reasons

13. The location of the appeal site is within the AONB, a national designation which recognises the value and beauty of the landscape. I have a statutory duty³ to seek to further the purpose of conserving and enhancing the natural beauty of such areas. Consistent with that, paragraph 182 of the Framework states that this is a matter that attracts great weight.
14. The landscape character assessment for the Cotswolds National Landscape categorises the area in and around Withington as the Upper Coln Valley, which is within the High Wold Valley character type. The special and sensitive qualities of the AONB at this point are derived in part from a broader valley form, between areas of woodland and through which the river Coln meanders.
15. The village of Withington has a distinctive U-shaped settlement pattern which straddles the river Coln. Built form generally follows the alignment of roads, and close to the appeal site, is predominantly one plot deep. The presence of gently sloping open fields and farmland along the valley floor and contained within the curve of the village reflect key characteristics identified as contributing positively to the Cotswolds National Landscape.
16. The appeal site is a roughly wedge-shaped parcel of land that is devoid of built form and has an open and verdant character consistent with an agricultural use. It lies at a peripheral north-eastern area of the settlement where the pattern of built form is becoming more sporadic, with the appeal site itself providing a gap between buildings along Harnham Lane. A public right of way runs from Harnham Lane through the site connecting to fields and the western section of Withington beyond. These factors reinforce key characteristics of the landscape character of the AONB.
17. The shape of the appeal site combined with its use and absence of built form, forms part of an attractive view from Harnham Lane, across meadows towards the tower of the Grade I listed Church of St Michael. This is illustrated in Viewpoint 1, Figure 1 of the photomontage provided. The architecture of the church tower provides a focal point and is seen against a backdrop of partly wooded rising land. The flatter, open and agricultural land in the foreground, which includes the appeal site, provides an inviting scenic context for the route of the footpath. Consequently, the location and use of the appeal site presently enrich the recreational quality of the right of way and facilitates an appreciation of the natural beauty of this part of the AONB. My findings on this are reinforced by some of the representations received whereby users of the footpath describe their positive experiences in using it.

³ Section 85, Countryside and Rights of Way Act 2000 (as amended)

18. The proposal would introduce up to two dwellings onto the land where there is currently an absence of built form. The additional volume of buildings, associated hardstanding, vehicles, lighting and garden at this location would inevitably erode the contribution the appeal site makes to the landscape qualities of the AONB. The tapering shape of the appeal site and need to provide vehicular access whilst also segregating the public right of way makes it very likely that buildings would be sited well into the site to take advantage of its wider dimensions. This would be the case for schemes for both one or two dwellings and is illustrated on both site layouts provided. Hence, it is apparent from the location, land use and amount of development proposed that the development would harmfully encroach into the open and rural characteristics of the site.
19. This would adversely affect the attractive view from Harnham Lane and would feature in the foreground when approaching the public right of way, detracting from the positive qualities of the scene and making it less enticing. Figure 2 of the photomontage provided reinforces my concerns in this respect.
20. Furthermore, it is highly likely that the public right of way would be more formally demarcated to distinguish it from the proposed residential use to provide future occupants with a reasonable degree of privacy. Consequently, this is likely to make this section of the footpath feel more enclosed and would diminish the experience for users by interfering with the ability to appreciate the beauty of the wider open and natural surroundings.
21. Paragraph 104 of the Framework states that planning decisions should protect and enhance public rights of way. I consider that this encompasses more than whether such routes can be accessed, it also includes the qualitative experience for users. Especially so given that often, walking is undertaken for recreational purposes and enjoyment. By diluting the quality of the experience as described, the proposed location and use of the development would conflict with the purpose of conserving and enhancing the natural beauty of the AONB. As such, it would run counter to the expectation of the statutory duty.
22. It is put to me that the undeveloped gap in Harnham Lane provided by the appeal site is coincidental and therefore, not of intrinsic importance. It is further asserted that the public right of way is a relatively modern feature that does not constitute a historic approach to the church. Even if that were the case, it does not detract from the positive landscape qualities identified in relation to the configuration and location of the appeal site which contribute towards the special qualities of the AONB. In any event, the balance of evidence before me indicates that it is probable that the footpath route has been in use for at least two hundred years.
23. The Cotswold District Local Plan 2011-2031, August 2018 (LP) includes a development strategy that seeks to focus most growth within named Principal Settlements. Otherwise, policy DS3 of the LP permits small scale residential development in Non-Principal Settlements subject to criteria, and policy DS4 prevents new-build open market housing outside of Principal and Non-Principal Settlements save for specific exception policies in the LP.
24. It is common ground that Withington is a Non-Principal Settlement for the purposes of the LP. Essentially the parties disagree as to whether the appeal site is in Withington or is countryside for the purposes of the development plan and therefore, whether policy DS3 or DS4 of the LP is applicable. This

effectively requires a planning judgement to be made that primarily turns on the position on the ground and the pattern of development near to the appeal site.

25. The section of Harnham Lane close to the appeal site has residential development along both sides. The southern part of the lane has a broadly consistent pattern of detached, relatively modern dwellings set back from the lane and within similar sized plots. The pattern becomes more irregular and dispersed towards the northern end, where older vernacular properties are more prevalent, the lane ends and there is a transition into agricultural fields.
26. The appeal site lies between Cleevely Cottage and its grounds to the north and Harnham Cottages to the south. On this basis the appellant asserts that the appeal site constitutes an undeveloped gap within an otherwise built-up frontage. In relation to the narrower eastern portion of the site that lies between existing built form and addresses Harnham Lane, this is a persuasive argument.
27. However, the appeal site broadens out to the west and extends considerably further westwards than most of the dwellings along the western side of Harnham Lane. Owing largely to the shape of the appeal site and the need to provide access, irrespective of whether a single or two dwellings were to be constructed, it is very probable that they would be sited deeper into the site and further westwards than the prevailing built form. Both illustrative layouts reinforce this as they show built form further westwards than the principal building at Cleevely Cottage, and considerably further west than that at 1-3 Harnham Cottages.
28. Accordingly, whilst an eastern portion of the appeal site is in Withington, the wider western end of the site lies outside and constitutes countryside for the purposes of the LP. It is not convincingly shown that the proposed location of development for either one or two dwellings would, in its entirety, fall within the type of small-scale residential development permitted by policy DS3 of the LP. Rather development would encroach westwards into the countryside resulting in a more dispersed settlement pattern than the established context. In the absence of evidence to justify any specified exceptions, the location of the development would therefore conflict with policy DS4 of the LP.
29. My attention is drawn to two examples⁴ where the Council has permitted residential development in Withington based on policy DS3 of the LP, and it is contended that these provide support for the scheme before me. Figure 6⁵ shows both examples are some distance from the appeal site, and therefore, not part of its immediate context. Given the unique characteristics of the location of land, inevitably there are differences in the pattern of development and position on the ground. The evidence before me shows that the land at Meadowside previously accommodated barns and stables, whereas land at Woodview Cottage formed part of an existing residential garden. These were factors relevant to the judgement exercised in those instances which do not apply to the appeal site. Accordingly, it is not shown that either is directly comparable. Hence, whilst they provide a little general weight in favour of the proposal, this is insufficient for me to find otherwise on its planning merits.

⁴ Referenced 21/01145/FUL Meadowside and 20/02756/FUL Woodview Cottage

⁵ Appellant's Planning Appeal Statement

30. Overall, I find that the location, land use and amount of development, even if restricted to one dwelling, would cause harm to the natural beauty and special qualities of the AONB. This carries great weight against granting permission in principle. Moreover, the location of the proposed development would conflict with the development strategy for residential development contained in the development plan.
31. Therefore, the proposal would conflict with policies EN1, EN4, EN5 and DS4 of the LP. Amongst other matters, policies EN1, EN4 and EN5 seek to conserve and enhance the quality of the natural environment, and the special qualities of the AONB in particular. Policy DS4 seeks to restrict residential development outside the Principal and Non-Principal Settlements to specified exceptions.

Conclusion

32. Planning law requires that applications for permission in principle be determined in accordance with the development plan unless material considerations indicate otherwise. Some public benefits would flow from the contribution that up to two dwellings would make to the overall housing supply, and the economic benefits that would arise from their construction. Nevertheless, given the modest amount of development, these would be minor in extent and so would not justify taking a decision other than in accordance with the development plan.
33. Therefore, for the reasons given above I conclude that the appeal should be dismissed.

Helen O'Connor

INSPECTOR