



# Appeal Decision

Site visit made on 13 June 2024

**by C Shearing BA (Hons) MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 17 July 2024**

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**Appeal Ref: APP/C1625/W/23/3329704**

**Land North of Windsoredge Lane, Nailsworth, Gloucestershire GL6 ONP**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant permission in principle.
  - The appeal is made by Mr Millar of Livedin against the decision of Stroud District Council.
  - The application Ref is S.23/0237/PIP.
  - The development proposed is described as 'between 2 and 4 custom build houses'.
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## Decision

1. The appeal is allowed and permission in principle is granted for between 2 and 4 custom build houses at Land North of Windsoredge Lane, Nailsworth, Gloucestershire GL6 ONP in accordance with the terms of the application, Ref S.23/0237/PIP and the plans submitted with it.

## Preliminary Matters

2. Permission in principle is part of a 2-stage planning consent process which provides an alternative way of obtaining planning permission for housing-led development. It separates the consideration of matters of principle for proposed development on a site from the technical detail of that development. The permission in principle consent route has 2 stages: the first stage, or permission in principle stage, establishes whether a site is suitable in principle, and the second, technical details consent (TDC) stage is when the detailed development proposals are assessed. A full planning permission is only secured when both stages have been passed.
3. The appeal relates to the refusal of permission in principle, for which the Planning Practice Guidance (PPG) describes that matters within its scope are limited to location, land use and amount of development.
4. The Council has an emerging Local Plan (the ELP) which is currently undergoing examination. That process is experiencing delays and the Council report objections to its policies. As such there is uncertainty as to how far away the ELP is from adoption and the final form that its policies may take. The relevant policies referred to are discussed in turn below.
5. The appeal is accompanied by two Unilateral Undertakings dated 26 June 2024 (the UUs) which relate to mitigation for the Cotswolds Beechwoods and Rodborough Common habitat sites. These have been taken into account in the determination of the appeal.

## **Main Issues**

6. The main issues are:

- Whether the site is suitably located for new housing, with regard to the Council's spatial strategy;
- The effects of the proposal on the character and appearance of the area, including the Cotswold Area of Outstanding Natural Beauty (AONB), and;
- The effects on designated habitat sites.

## **Reasons**

### *Spatial Strategy*

7. Policy CP2 of the Stroud District Local Plan 2015 (the LP) sets out the Council's strategy for the delivery of development in the District. It identifies strategic sites located at principal settlements, and states that, outside those sites, development shall take place in accordance with a settlement hierarchy and that housing development will take place within settlement development limits. It goes on to state that limited development will take place outside these designated areas and in accordance with other policies of the Plan.
8. Policy CP3 sets out the hierarchy for growth and development across the District's settlements, where they are ranked according to their size and range of services and facilities. The supporting text states that the policy seeks to promote sustainable communities to maintain and promote the viability of local facilities and reduce the need to travel to services and facilities elsewhere.
9. Policy CP3 acknowledges Nailsworth to be a Local Service Centre and Second Tier Settlement which is described as one with potential to provide for modest levels of jobs and homes to help sustain and, where necessary, enhance services and facilities, promoting better levels of self containment and viable sustainable communities. Policy CP15 of the LP relates to development in the countryside and states that, in order to protect the separate identity of settlements and the quality of the countryside, proposals outside identified settlement development limits will not be permitted except where certain principles are complied with as set out in that policy.
10. The appeal site lies outside the settlement boundary for Nailsworth and can be considered to be in the countryside for the purposes of the development plan. Based on the evidence before me, the proposal would not adhere to any of the principles set out in Policy CP15. The proposal would also not comply with Policy HC3 of the LP, which relates to self-build housing provision at strategic sites allocated by the LP.
11. As such, the site is not suitably located for new housing having regard to the Council's spatial strategy, and it would conflict with policies CP15 and HC3, and as a consequence conflict with policies CP2 and CP3 of the LP.
12. It is not apparent that the proposal falls to be considered under draft Policy HC4 of the ELP which refers to single plot self-build or custom build affordable dwellings, or ELP Policy DHC2 which relates to smaller rural settlements.

### *Character and Appearance*

13. The site is within the Cotswolds AONB, now otherwise known as the Cotswold National Landscape. The National Planning Policy Framework (the Framework) states that great weight should be given to conserving and enhancing landscape and scenic beauty in these areas, which have the highest status of protection in relation to these issues. The Stroud District Landscape Assessment 2000 identifies the site to be in one of the District's Secluded Valleys, defined by its steep sides, concave narrow valley form and complete interlocking valleys. It states that this area supports a variety of settlement patterns and includes larger settlements on high land and throughout the Nailsworth valleys, where more recent development has spread up the valley slopes and is prominent over considerable distances.
14. The appeal site is currently free from built form and has an open and verdant character. It slopes steeply downwards to the north and is exposed in far reaching views through the valley to the north. The site adjoins an existing network of lanes and other properties to three sides which create a staggered edge to the settlement. These surrounding buildings vary in their height and design and respond to the gradient of the land, for example in the case of the properties to the west, which step steeply downwards to the north.
15. The proposal would entail a relatively small expansion to the edge of the settlement into the countryside when considered against the size of Nailsworth as a whole, and would appear against the backdrop of the existing surrounding buildings in longer views from the north. The effects of the proposal on the landscape would inevitably depend on the particular characteristics of the development including its site layout and design, which are not provided at this stage. However, despite the sensitivity of the location, the existing built forms and settlement are part of the immediate landscape character and it cannot be ruled out that a satisfactory solution could reasonably be achieved. If the appeal is allowed, the site must receive a grant of TDC before the development could proceed. Only at the time of approval of TDC would the development have planning permission and there would be no requirement that this would be given automatically.
16. In conclusion on this main issue, and in considering the limited scope of issues which can be considered at this stage, the proposal would be acceptable in terms of its effects on the character and appearance of the area and the special landscape character of the AONB. Accordingly the proposal before me would not conflict with Policy EN7 of the LP which requires development to conserve or enhance the special landscape features, nor the objectives of the Framework relating to AONBs.

#### *Habitat Sites*

17. The site lies within the catchment zones of the Rodborough Common Special Area for Conservation (SAC) and the Cotswolds Beechwoods SAC, which are afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended ('the habitat regulations'). The Cotswolds Beechwoods is also notified at a national level as The Cotswold Common and Beechwoods Site of Special Scientific Interest (SSSI).
18. Rodborough Common SAC is designated for its calcareous grassland, being the most extensive area of semi-natural dry grasslands surviving in the Cotswolds, and it contains a wide range of structural types. Conservation objectives for Rodborough Common SAC include the need to maintain in favourable condition

the calcareous grassland. The Cotswold Beechwoods SAC comprises qualifying features including beech forests and semi-natural dry-grassland and scrubland facies on calcareous substrates.

19. In the case of both SACs, recreational pressures have been found to pose a significant threat to their designated features. In the case of Rodborough Common this includes effects of walking by local residents, and in the case of the Cotswolds Beechwood this includes damage and trampling, contamination and fire. Consequently, and based on visitor surveys for both, zones of influence have been established, within which housing growth may result in an increase in recreational pressures from new residents. The appeal site lies within the designated zones of influence for both and as such likely significant effects on the integrity of the SACs cannot be ruled out.
20. The proposal would entail new dwellings and additional permanent occupants within 3.9km of the Rodborough Common SAC and within the 15.4km zone of the Cotswolds Beechwoods SAC which, as set out above, would increase recreational pressures upon them. The Council have a strategic approach to mitigation for both SACs. The Rodborough Common SAC Recreation Mitigation Strategy 2022 sets out measures including habitat management, access infrastructure and raising awareness, to be funded by development in the area. The Cotswold Beechwood SAC Mitigation Management Strategy 2022 similarly gives details of necessary mitigation for the effects of new development and its approach includes strategic access management and monitoring to make the SAC more resilient to increased recreation, as well as suitable alternative natural greenspace away from the SAC. It similarly establishes financial contributions from development to fund those measures. Based on the evidence before me, I have no reason to doubt that the measures set out for both SACs would be successful in mitigating the effects of the proposal.
21. Planning Practice Guidance (PPG) states that it is not possible for conditions to be attached to a grant of permission in principle and that planning obligations cannot be secured at this stage. However, there is no legal reason why an obligation cannot be entered into at any time. The appellant has provided two UUs, based on a template provided by the Council, and these would ensure that the required financial contributions towards mitigation for each SAC would be paid prior to the commencement of development, to be spent only for the purposes of that mitigation.
22. In conclusion on this main issue, the UUs would ensure that there would be no adverse effect on the integrity of the SACs. As the competent authority for the purpose of the habitat regulations, I am satisfied that, subject to compliance with other statutory requirements regarding the permission in principle process, permission in principle could be granted, as described in the PPG. The proposal would comply with Policy ES6 of the LP, which relates to the designated European Sites and requires appropriate mitigation.

### **Planning Balance**

23. The Council state that it can demonstrate a 5.34 year supply of land for housing and that its housing policies can be considered up to date. The Council consider it is also meeting its duties under the Self Build and Custom Housebuilding Act in terms of maintaining a self-build register which it asserts

demonstrates that the numbers of planning permissions for self-builds exceeds the number on the register.

24. The appellant has raised numerous and significant concerns in respect of the Council's methodologies, particularly in light of recent changes in legislation relating to how such permissions are counted, and finds that no self build housing has been delivered under Policy HC3 of the LP. The Council have not provided substantive evidence in response to those concerns nor reassurances as to whether the requirements of the Act are being met in light of the recent legislative changes. In the absence of such information I cannot be satisfied that the Council's obligations under the Act are therefore being met or that the local plan policies insofar as they relate to self builds are not out of date, as alleged. On this basis I have no strong reason to reach a contrary view. The appellant alleges that the shortfall in self build plots could be as high as 112 plots and that the Council have met only a third of their requirement. This has not been disputed by the Council and the extent of the shortfall could therefore be very significant.
25. As such, the provisions of paragraph 11d) of the Framework are engaged, which state that where the policies which are the most important for determining the application are out-of-date, permission should be granted unless one of two criteria apply. The assessment of the proposal above finds that the application of policies in the Framework that protect areas or assets of particular importance do not provide a clear reason for refusing the development. As such it should be considered whether the adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
26. The adverse impact of granting permission has been found to be conflict with the Council's spatial strategy due to the site's position beyond the defined edge of Nailsworth. However, as above, the site directly adjoins the settlement boundaries to three sides. While the routes towards services and facilities are often via narrow lanes with no designated footpath, and sometimes relatively steep, this is a defining characteristic of this part of Nailsworth and is shared with the vast majority of properties nearby, including those adjoining the site which lie within the settlement boundary. I observed that as a result of the nature of the lanes, vehicle speeds are generally slow and there is a high degree of surveillance over the lanes from surrounding houses and gardens. For these reasons, future occupants of the site would not necessarily be deterred from walking to the services and facilities of Nailsworth and its public transport links, and the site is reasonably well connected. For these reasons, and as the spatial strategy seeks to promote sustainable communities and reduce the need to travel elsewhere, I ascribe moderate weight to the conflict found with the Council's spatial strategy.
27. The proposal is intended to provide self build homes. There is no mechanism before me to ensure that they would be specifically for this purpose, other than the description of development. Nonetheless, it is relevant that the PPG explains that an application for TDC, at which point full planning permission would be granted, must be in accordance with the permission in principle that is specified by the applicant, and that planning obligations may be needed at that stage. I note the appellant's reference to another appeal decision where

this view was reached<sup>1</sup>. In addition, the Self-build and Custom Housebuilding Act 2015 refers to development permissions as including permission in principle, which would be the case here if the appeal were to be allowed. On this basis, and in the absence of evidence of reason to reach a contrary view, the proposal would contribute towards the provision of self-build homes in the District. In addition, the size of the site is one which the Framework acknowledges can make an important contribution to meeting the housing requirements of an area, and which are often built-out relatively quickly. Given the likely substantial shortfall in these permissions, I therefore give significant weight to the provision of 2 to 4 self build homes which would be delivered by the proposal.

28. There would also be some economic benefits from the proposal arising from the construction process and on going expenditure into the local economy by future occupants. However, this benefit attracts moderate weight, given the scale of the proposal.
29. Taking these matters into account, the adverse impacts of granting the permission would not significantly and demonstrably outweigh the benefits, and the presumption in favour of sustainable development therefore applies. Even if the shortfall in self build permissions were not as severe as set out by the appellant, and if the weight given to the provision of self build homes were reduced to moderate, the outcome of this planning balance would remain the same. As such, there are material considerations of sufficient weight which would outweigh the conflict identified with the development plan.

### **Other Matters**

30. The grade II listed building of Parkview lies to the west of the appeal site. This is a traditional cottage with a setting of existing surrounding houses as well as the more open countryside to the north. Given the distance of the appeal site from that building and intervening structures, the proposal would preserve its setting. I have had regard to the comments of the Council's Conservation Officer in reaching this view.
31. I note the concerns raised by third parties. The site is clearly one which both local residents and visitors to the area enjoy a view over towards the valley beyond. However, the specific effects of the proposal on these views and on the openness of the site would be matters to be considered at the TDC stage, subject to the layout, scale and design of the proposal. This would similarly be the case where the effects of the development on the living conditions of occupants of nearby properties are concerned.
32. Access to the site is not established at this stage, but there is not substantive evidence to suggest that the use of the existing road network to serve between 2 and 4 homes would cause unacceptable harm to highway safety, or that the impacts on the road network would be severe. The effects associated with the construction period would be temporary and conditions could be used if necessary at the TDC stage to help address those concerns. Details relating to biodiversity and protected species would also fall to be considered at Stage 2 of the process, as set out by the PPG.

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<sup>1</sup> Appeal reference APP/P0119/W/21/3288893

33. The site may present challenges due to its gradient and the presence of an underwater spring. It is also reported that there is a lack of infrastructure to the site. However it is not apparent that these matters should provide reasons to withhold the grant of permission in principle and issues relating to the financial viability of the development are for the appellant.

### **Conditions**

34. The PPG makes clear that it is not possible for conditions to be attached to a grant of permission in principle. While I note the comments of some consultees which include requests for conditions, for example relating to treatment of surface water, this would need to be considered at TDC stage, where conditions can be imposed.

### **Conclusion**

35. The appeal scheme would not adhere to the development plan taken as a whole but material considerations, namely the Framework, indicate that the appeal should be determined other than in accordance with the development plan. Accordingly, for the reasons given, and having regard to all other matters raised, the appeal is allowed.

*C Shearing*

INSPECTOR