



Appeal Decision

Site visit made on 3 June 2024

by Tamsin Law BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 August 2024

Appeal Ref: APP/P1615/W/24/3336348

Bullo Pill, Newnham on Severn, Gloucester, GL14 1ED

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr Darren Larkham against the decision of Forest of Dean District Council.
 - The application Ref is P0673/23/OUT.
 - The development proposed is described as "Outline application for the erection of new two-bedroom dwelling."
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs has been made by Forest of Dean District Council against Mr Darren Larkham. This application is the subject of a separate Decision.

Preliminary Matters

3. The appeal proposal was submitted in outline with the means of access being considered at the outline stage. Notwithstanding that, an indicative block plan together has also been provided. However, with the exception of the site access, the details shown on the additional particulars are not being considered at the outline stage. I have therefore treated these drawings as being indicative to show a possible way of developing the site.

Main Issues

4. The main issues are;
 - Whether the appeal site is in a suitable location for new housing, having regard to local and national policy and access to local services;
 - The effect of the proposed development on the significance and setting of the Grade II listed buildings known as Dock Cottage and Dock and Lock Walls at Bullo Pill;
 - Whether the proposed development would be at an unacceptable risk of flooding;
 - The effect of the proposed development on protected species, namely bats, and on the Wye Valley and Forest of Dean Bat Special Area of Conservation (SAC) and the River Wye Bat SAC; and

- the effect of the proposed development on highway safety.

Reasons

Location

5. One of the strategic objectives of Policy CSP.4 of the Forest of Dean District Council Core Strategy (2012) (CS) is to promote thriving sustainable communities. The supporting text sets out the principle that development should be concentrated at settlements. To this end the policy states that most changes in towns and villages will be expected to take place within the existing settlement boundaries. It is stated that exceptions to this may include affordable housing and building conversions. CS Policy CSP.5 sets out the type, numbers and general location of new housing.
6. Policy AP1 of the Forest of Dean District Council Allocations Plan 2006 to 2026 (2018) (AP) states that the primary consideration when assessing planning applications will be whether or not the development is sustainable with the overall aim of improving the economic, social and environmental conditions in the area.
7. The site is not located within a development boundary and is therefore considered to be in the open countryside. When travelling along the access road to the site the area has a rural character, with agricultural fields, mature trees and hedgerows adding to its character. The site is located on a single-track road that leads to a cluster of buildings, both commercial and residential in use, located between the railway line and the River Severn. The track has no footpaths or street lighting.
8. The site is located to the south of Newnham, which contains a number of services to meet day to day needs. However, the site is more closely aligned with its surrounding rural characteristics than the more built-up area of Newnham. During my site visit, I noted that the A48, which the access track is off, benefits from a pavement, however occupiers of the proposal would need to travel some 400 metres along the single, unlit track before reaching this. A bus stop is also provided on the A48; however, users would need to travel along the aforementioned track to reach this and would have to cross the busy A48 to access the south bound service.
9. The distance between the site and the settlement, the narrow nature of the track and the lack of pavement and street lighting would discourage the occupiers of the proposed dwelling from walking or cycling to access shops, services and facilities. Therefore, it is reasonable to conclude that occupiers of the proposed dwelling would be heavily reliant upon the use of a private car to access shops, services and facilities, especially during the winter months when daylight hours are limited and in inclement weather.
10. In conclusion, the proposal would not provide a suitable location for housing having regard to the accessibility to services and facilities. Therefore, it would not accord with CS Policy CSP.1, CSP.2 or AP Policy AP1 which, amongst other things, seek to reduce the impacts of climate change and ensure development is sustainable with the overall aim of improving the economic, social and environmental conditions in the area. It would also not meet the aims of paragraph 8 of the National Planning Policy Framework (the Framework) in terms of ensuring accessible services and facilities.

Listed Buildings

11. The appeal site is located close to two listed buildings. Dock Cottage to its west, and Dock and Lock Walls at Bullo Pill to the south. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (as amended) provides at s66(1) that in considering whether to grant planning permission for development which affects a listed building or its setting, special regard shall be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
12. The Framework advises that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting.
13. Dock Cottage is a detached building converted in to residential use in the 19th century. It derives its significance from its architectural detailing and historic links with the commercial function of Bullo Pill as a dock. Dock and Lock Walls at Bullo Pill derives its significance from its important historic function as part of trade routes in and across the River Severn. Whilst the stone walls are in a state of disrepair this does not detract from the historic importance of the listed building.
14. The area is characterised by an access road with mainly residential uses to one side and, apart from one dwelling to the north of the appeal site, commercial uses to the other. The commercial uses lie adjacent to the bank of the River Severn and are associated with the historic and current workings.
15. The appeal site is located on the opposite side of the access track from Dock Cottage and to the north of Dock and Lock Walls at Bullo Pill. I concur with the Inspectors view on a previous appeal¹ that the appeal site formed part of the dock complex that included a tramway and mooring posts that terminated at a small wharf. The site therefore has a historic association with both listed buildings in terms of the historic commercial use of the area and forms part of the setting of both listed buildings. The appeal site, and surrounding commercial uses therefore contribute to their significance.
16. Whilst the application is in outline with only access and scale to be determined, the appellant has provided an indicative drawing of the proposed dwelling. In the heritage statement the appellant describes the design of the proposed dwelling as harmonising with the architectural character of Dock Cottage and the use of materials would integrate it with the surrounding area.
17. Based on what I saw during my site visit and the submitted plans, the proposed development would appear as a two-storey residential dwelling with associated access and parking. It would appear clearly domestic in design and would have little resemblance or relationship to the nearby commercial operations. The domestic appearance of the site would appear as an incongruous addition to the area and would erode the commercial setting of the listed buildings, which contributes to their significance.

¹ APP/P1615/W/22/3313059

18. As the proposal is for one dwelling, I find that the harm that would arise would be less than substantial to the significance of the listed buildings. The Framework requires that great weight is given to the conservation of designated heritage assets and that less than substantial harm to its significance should be weighed against the public benefits of the proposal.
19. The Council cannot demonstrate a five-year housing land supply. The proposal would provide a single dwelling, which is a small contribution to the lack of housing land supply. Even with the suggested shortfall, and notwithstanding my finding on this matter in the simultaneous appeal, in light of the scale of the development, I ascribe only moderate weight to the benefits associated with the delivery of a single dwelling.
20. The appellant has referred to the dwelling supporting security, coastal rescue, and maritime operations. Whilst some details of maritime operations has been submitted, this is not detailed and does not provide the evidence to quantify the need for a dwelling in this specific location. Furthermore, the dwelling proposed development is for an open market dwelling. The appellant has also referenced being made homeless and the costs of housing in the immediate area. The proposed dwelling would be an open market dwelling, not restricted as an affordable dwelling. I have also not been provided with any detailed evidence of house prices, rental prices or the affordability of dwellings in the area. As such, I can only give these considerations moderate weight.
21. The proposed development would have an unacceptable and harmful effect on the setting and significance of the Grade II listed buildings, known as Dock Cottage and Dock and Lock Walls at Bullo Pill. It would conflict with CS Policy CSP. 1 and AP Policies AP1, AP4 and AP5 which seek, amongst other things, to ensure that developments satisfactorily accommodate historic sites and heritage assets and protects the special qualities, historic character and local distinctiveness of the district.

Flood Risk

22. The Framework indicates that a sequential approach should be used in areas known to be at risk from any form of flooding. Planning Practice Guidance (PPG) adds that for the purposes of applying the Framework the 'areas at risk of flooding' are principally land within Flood Zones 2 and 3.
23. The appeal site is located on the banks of the River Severn. At some point the land appears to have been raised with an area of hardstanding being created from what appears to be railway sleepers. The appellant has provided a map detailing the flood zones, which the Council does not dispute, which shows the appeal site being located in Flood Zones 1, 2 and 3.
24. From reviewing the evidence before me, it appears that most of the appeal site is located within Flood Zone 1, including the access, with sections being located in Flood Zones 2 and 3 as you move east in the site towards the river. As such, there could be sufficient land located outside Flood Zones 2 and 3 to accommodate a dwelling. However, as the appeal site is in outline and contains part of Flood Zones 2 and 3 a Flood Risk Assessment should be undertaken. This would also include details of flooding relating to climate change which could have an impact on the remaining areas of the site, currently in Flood Zone 1.

25. In light of the evidence provided, the response from the Environment Agency, and the importance placed upon addressing flood risk by the Framework and relevant development plan policies, I find that, in the absence of a Flood Risk Assessment, or sequential test, the flood risk of the site has not been adequately assessed. Therefore, the proposal does not demonstrate that the development would be made safe during its lifetime or that, overall, occupants would be safe from flooding.
26. Furthermore, whilst the appellant disputes that the land has been raised, it is clear from my site visit that some ground has been built up to create a level hardstanding, which currently accommodates a caravan. I have limited information on when this area of land was raised or any detail on whether this has been assessed in terms of increasing in flood risk elsewhere. As the proposed dwelling would be located on this area, in the absence of evidence pertaining to flood risk I am unable to determine whether the proposed development would include measures to avoid, control, manage and mitigate flood risk and not increase flood risk elsewhere.
27. It has not been demonstrated that the site is a suitable location for a dwelling, with respect to flooding. The proposed development would conflict with CS Policies CSP. 1 and CSP. 2 which seek, amongst other things, to ensure that developments are safe from flooding and flood risk is not increased elsewhere.

Biodiversity and SACs

28. Paragraph 180 of the Framework refers to amongst other things, protecting and enhancing sites of biodiversity, and minimising impacts on and providing net gains for biodiversity. Paragraph 186 indicates that if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated or as a last resort, compensated for, planning permission should be refused.
29. Planning Practice Guidance² (PPG) states that an ecological survey will be necessary in advance of the planning application if the type and location of development could have a significant impact on biodiversity and existing information is lacking or inadequate.
30. The appeal site is located within Zone A for horseshow bats associated with the Wye Valley and Forest of Deans SAC. The Council note that the appeal site is located within 1.6km of a lesser horseshoe maternity and hibernation roost and 300 metres from a lesser horseshoe day/night roost.
31. The appeal site comprises an area of hardstanding, caravan and outbuilding. The site is bound to its sides by hedgerow and trees. The appeal site slopes down towards the river.
32. The appellant has submitted a Preliminary Ecological Assessment (PEA) which notes that within 2.5 km of the site there are a number of records of species of bats and that an abandoned roost was noted adjacent to the appeal site in 2014. The PEA states that the site is considered a very sensitive location and falls within the core sustenance zone of horseshoe bat roosts. The PEA states that further surveys are required in order to establish the level of bat activity. No further survey work has been undertaken. As such, I am unable to conclude whether the proposed development would have an acceptable impact on bats.

² Bats: advice for making planning decisions

33. The appeal site falls within the amber impact risk zone for Great Crested Newts. Standing advice by Natural England³ 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.
34. There are records of two ponds within 500 metres of the appeal site, with the closest being approximately 110 metres away. The PEA states that this pond has not been assessed and notes that no GCN's were present during a 2016 survey of the pond. The PEA does go on to say that further survey work should be undertaken on the ponds in order to establish whether there is now the presence of GCNs. No further survey work has been undertaken. As the evidence demonstrates nearby GCN records and potential refuges are located on the appeal site (hedgerows and rubble), the appeal cannot be allowed without the appropriate surveys.
35. Circular 06/2005⁴ 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. I am not convinced that there is sufficient detail to fully understand the impact of the development on biodiversity interests.
36. 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 the SAC, bats or 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 scheme would therefore conflict with CS Policies CSP. 1 and CSP. 4 and AP Policies AP1, AP4, AP7 and AP8 which seek, amongst other things, to ensure that development safeguard features and support habitats which form part of ecological networks. The proposal would also conflict with paragraphs 180 and 186 the Framework that seeks to protect and enhance sites of biodiversity value.

Highway Safety

37. The appeal site is served by a single lane access track from the A48. The Council's Highways Department note that the junction where the track and A48 meet is substandard, with a restricted northerly visibility splay. The A48 is a 60-mph road where a visibility splay of 215 metres is required. The existing junction only provides a 187 metres splay.
38. Whilst the appellant asserts that the proposed development would reduce vehicular movements, no traffic surveys have been submitted to support this. Whilst the appeal site may be the appellants location of employment, there are no services or facilities located at Bullo Pill. As noted earlier in my decision future occupants would need to drive to access day to day services, such as

³ Great crested newts: advice for making planning decisions (2022)

⁴ Biodiversity and geological conservation: circular 06/2005

shops and schools. Access to the wider area is only via the access track to the substandard junction with the A48.

39. Whilst the provision of a single dwelling not necessarily generate large numbers of vehicle movements, I concur with the Inspector's observation in appeal decision Ref APP/P1615/C/22/3303152 that if the junction is dangerous then it is dangerous whether the increase in traffic is large or small.
40. Furthermore, the access track does not have any pavements or lighting. As such, any pedestrians would need to walk in the narrow carriageway to access the bus stop and pavement along the A48. These constraints could cause conflicts between vehicles and pedestrians, particularly during dark hours where visibility would be severely restricted. I note the appellant has suggested that improvements could be made to the access road. However, I have not been provided with any details pertaining to the improvements.
41. For the above reasons the proposal would be detrimental to highway safety. The proposal would therefore conflict with CS Policies CSP. 1 and CSP. 2 and AP Policy AP1. The proposal also conflicts with paragraph 111 of the Framework which seeks to ensure that development does not have an unacceptable impact on highway safety.

Other Matters

42. I have found that the harm to the significance of the designated heritage asset would not be outweighed by the public benefits of the proposal. Such results in conflict with policies of the Framework that protect areas or assets of particular importance and provide a clear reason for refusing the development proposed. Therefore, irrespective of the housing land supply position, the proposal does not benefit from the presumption in favour of sustainable development outlined at paragraph 11 of the Framework.
43. I acknowledge that this proposal is in proximity to the Severn Estuary Special Protection Area, Special Area of Conservation and Ramsar, which could result in adverse effects upon these designated sites. Had I been minded to allow this appeal, I would have sought a screening direction from the Secretary of State in accordance with Regulation 14(2) of The Town and Country Planning (Environmental Impact Assessment) Regulations 2017.
44. I may have also needed to engage with the requirements of the Conservation of Habitats and Species Regulations 2017 to consider the likely significant effects of the proposal on European protected sites (individually and in-combination with other plans and projects) and whether it was necessary to undertake an Appropriate Assessment (AA) was required.
45. Whilst I have given the appellant's personal circumstances careful consideration, I am mindful of the advice contained in Planning Practice Guidance⁵ that in general planning is concerned with land use in the public interest. I therefore find that this factor is not sufficient to outweigh the harm that would be caused contrary to the development plan and the Framework.

⁵ Paragraph: 008 Reference ID: 21b-008-20140306

Conclusion

46. For the above reasons, the proposal would conflict with the development plan as a whole and there are no other material considerations, including the approach of the Framework, that would indicate a decision otherwise in accordance with the development plan. It is for this reason that the appeal should be dismissed.

Tamsin Law

INSPECTOR