



Appeal Decision

Site visit made on 25 July 2024

by Tom Bristow BA MSc MRTPI AssocRICS

an Inspector appointed by the Secretary of State

Decision date: 06 September 2024

Appeal Ref: APP/F1610/W/24/3337045

Land South of Meadows Side, Church Street, Weston Subedge GL55 6QT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended (the '1990 Act') against a refusal to grant planning permission.
- The appeal is made by the Cotswold Building Consulting against the decision of Cotswold District Council ('CDC').
- The application is ref. 23/02007/FUL.
- The development proposed is described in the Council's decision notice of 4 August 2023 as for the 'erection of 3No. dwellings...'.

Decision

1. The appeal is dismissed.

Preliminary matters

2. Accurately reflecting the current iteration of the scheme, rather than as set out in the application form, I have used CDC's description of the proposal in the banner heading above. Although each scheme turns on its merits, this appeal follows an unsuccessful application for 4 dwellings.¹
3. Various statutory duties apply to my determination of this appeal. The site, a roughly rectangular parcel of open pastoral land, falls within the Cotswolds Area of Outstanding Natural Beauty (the 'AONB').² Section 85 of the Countryside and Rights of Way Act 2000 as amended requires that I 'seek to further the purpose of conserving and enhancing' the natural beauty of areas of outstanding natural beauty.³
4. The United Kingdom is a signatory to the Council of Europe Landscape Convention,⁴ landscape as a concept being 'as perceived by people whose character is the result of the action and interaction of natural and/or human factors', closely intertwined with landscape history.⁵ Paragraph 182 of the National Planning Policy Framework (20 December 2023, the 'NPPF') sets out how 'great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty which have the highest status of protection in relation to these issues...'.

¹ Ref. 22/03748/FUL.

² Since 22 November 2023 AONBs have also been referred to as National Landscapes.

³ As amended by section 245 of the Levelling-up and Regeneration Act 2023.

⁴ ETS No. 176.

⁵ Council of Europe, 2000.

5. Whilst outside the Weston Subedge Conservation Area further to the north, the site is opposite the churchyard of grade II* listed Church of St. Lawrence.⁶ As with much domestic ecclesiastical architecture, the Church traces its origins to around the thirteenth century (with successive eras of alterations, including fine Victorian gothic detailing). The list entry notes that the Church stands next to the site of a former moated manor house, a scheduled monument.⁷
6. Section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990 as amended places a duty on me to have special regard to the desirability of preserving listed buildings, their settings, or any features of special architectural or historic interest which they possesses. Recognising that heritage assets are an irreplaceable resource, NPPF paragraph 205 sets out how 'great weight' should be given to their conservation in line with their importance.
7. Section 38(6) of the Planning and Compulsory Purchase Act 2004 as amended requires that planning proposals are determined in accordance with the development plan unless material considerations indicate otherwise. Here the development plan includes policies of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011-2031 (adopted December 2017, the 'JCS') and of the Cotswold District Local Plan 2011-2031 (adopted 3 August 2018 the 'LP'). In addition to the NPPF, I have had regard to various material considerations including the Planning Practice Guidance (the 'PPG') and guidance produced by Historic England referenced by CDC.⁸

Main issues

8. The main issues are:
 - (i) whether the site is an appropriate location for residential development,
 - (ii) the landscape and visual effects of the proposal,
 - (iii) the effect of the proposal on historic significance, and
 - (iv) the implications of the scheme for the living conditions of the occupants of the neighbouring property to the north, Meadowside.⁹

Reasons

Location

9. The cornerstone of the appellant's case is that 'the proposal to construct 3 new homes and residential development in such locations [as the appeal site] is covered by the [LP] Policy DS3 ...'. LP Policy DS3 is titled 'Small-scale residential development in non-principal settlements'. Following on from the JCS, LP policy DS1 identifies 17 'Principal Settlements'. The village of Weston Subedge is not one. By virtue of LP policy DS2, development within the development boundaries of Principal Settlements is accorded in-principle support. Aligned with the overarching principles in the JCS, the LP therefore seeks to locate development principally where there is better access to services and facilities, and also to suitably safeguard rural character.¹⁰

⁶ List entry no. 1171337, nothing that the Churchyard contains variously separately listed structures and objects.

⁷ List entry no. 1003588.

⁸ Good Practice Advice in Planning: 2, 'Managing Significance in Decision-Taking in the Historic Environment' (27 March 2015) and Good Practice Advice in Planning: 3 (2nd Edition) 'The Setting of Heritage Assets' (22 December 2017).

⁹ Also referred to in the evidence before me as 'Meadows Close' or 'Meadows Side'.

¹⁰ Including as articulated via LP paragraphs 6.3.1 and 6.3.2 providing context to policy DS3.

10. I note LP paragraph 6.4.2 explains how its 'strategy facilitates sufficient development within Development Boundaries to meet, in full, the District's objectively assessed housing needs over the plan period.' That appears to have been borne out with the passage of time; the appellant does not counter CDC's position that they are currently able to demonstrate comfortably in excess of a five year supply of deliverable sites for housing relative to needs.
11. LP policy DS3, and also DS4, however, provide some flexibility for development to occur elsewhere. The appellant has alighted on policy DS3 in relation to this scheme, arguing that it lends support to the proposal. I disagree.
12. The title of LP policy DS3 uses the preposition 'in' before 'non-principal settlements'. The word 'in' also prefaces criterion 1 to LP policy DS3 and features in criterion 2. By contrast LP policy DS4 is 'Open market housing outside principal and non-principal settlements'. Policy DS4 sets out that outside settlements open market housing must be 'in accordance with other policies that expressly deal with residential development in such locations.' There is no argument put to me that the scheme would comply with such 'other policies',¹¹ nor that it would reflect the types of development referred to in NPPF paragraph 84.a) to e), being exceptions to the general position that the development of isolated homes in the countryside should be avoided.¹²
13. The appellant's central argument is therefore logically premised on the site being 'in' Weston Subedge. As a matter of judgement, in the absence of a settlement boundary, that is not the case. The principal built form of the Village is instead around the Conservation Area to the north. Heading southwards from the Conservation Area the site forms part of the staunchly rural surroundings to Weston Subedge. My observation in that respect is consistent with LP paragraph 6.3.2, which sets out that 'most of the District settlements have an essentially rural character that often merges into the surrounding landscape – a particular characteristic of the Cotswolds.'
14. There is, I accept, some development along Church Street further to the south of Meadowside than the appeal site, as the topography rises there towards Dover's Hill. However that development is sporadic. It is not as consolidated or regular as to the north of the appeal site. Nor is it as readily appreciable on account of the winding and enclosed nature of Church Street and Hill View around and beyond the appeal site towards the south.
15. There is also a collection of properties to the south of the Scheduled Monument accessed via Harris Lane, which spurs westwards off Church Street shortly beyond the appeal site. However that handful of properties, many of which are historic, is separate from the centre of gravity of the Village. Aside from Mulberry House, those properties are essentially occluded from view when travelling along Church Street. My observations in respect of the latter properties is consistent their characterisation via the former Cotswold District Local Plan 1999.¹³

¹¹ Noting the bulleted list under LP paragraph 6.4.3.

¹² Notwithstanding that the site cannot rationally be considered 'isolated'.

¹³ Paragraph 1.5 of which in respect of Weston-sub-Edge states 'beyond the church, the road rises steeply before a small cluster of traditional farm cottage is reached. The group, considerably more rural in character than the rest of the Weston-sub-Edge, appears quite detached from the village, even though it is relatively close'.

16. Reinforcing that reasoning is the arrangement of roads, public rights of way, and Village spaces. The built form of Weston Subedge is both linear, astride Church Street, but also nucleated around the junctions of Church Street and Evesham Road (B4035) with Stratford Road or Friday Street (B4632). As with the Conservation Area, that junction is again some distance to the north of the site. Beyond the B4632 relative to the appeal site is the Village Hall.
17. The nearest public right of way to the east of Church Street on the same side as the appeal site is footpath HWS26. That spurs off Church Street to the north of the Church, leading to the Village Green. The Village Green is set behind School Cottage and Lychgate Cottage, the latter next to Hazlehurst. Hazlehurst is the northernmost of the run of 4 bungalows to the north of the appeal site (comprising also Witt's End, Scheepscombe and Meadowside). Footpath HWS26 thereafter tracks away from Church Street into the countryside towards Lynches Wood, visible in the rising ground beyond the appeal site.
18. Footpath HWS18 instead flanks the Church on the opposite side of Church Street, thereafter heading away from the site south-westwards towards properties off Harris Lane. Therefore in terms of connectivity, aside from having a frontage to Church Street, the site is not presently well integrated or connected to the centre of gravity of the Village.
19. For the foregoing reasons the appeal site cannot rationally be said to be 'in' Weston Subedge. Policy DS3 does not therefore apply. Following my reasoning in paragraph 12 above, the logical consequence of that reasoning is that there is no express policy support for the scheme. As such, and again following the rationale for the strategy in the LP described in paragraph 9 above, the appeal site is not an acceptable location for the development proposed.
20. Had I found to the contrary, the in-principle support via LP policy DS3 is nevertheless qualified; criterion 1.c. to it setting out how development should complement 'the form and character of the settlement'. Moreover the development plan must be read as a whole and policy DS3 does not take primacy over other relevant policies. If it did, that policy would vitiate the statutory and policy context set out in paragraph 7 above (consistency with national policy being a test of the soundness of a development plan document).

Landscape and visual character

21. Noting my explanation of the statutory and national policy context relevant to the AONB above, in summary, amongst other things, and with varying emphases, LP policies EN1, EN2, EN4, EN5 seek to ensure that development integrates suitably with the built and natural environment.
22. The site falls within the 'Vale of Evesham Fringe' landscape character area ('LCA 19D'), as described in the Cotswolds Landscape Character Assessment (commissioned in 2002). LCA 19D is aptly therein characterised as a principally open and sparsely settled agrarian landscape, where there are often expansive views towards more dramatic surrounding terrain. LCA 19D is also not without a sense of intimacy, however, on account of the presence of streams and mature hedgerows (often historic).

23. The appellant's position is essentially that the scheme would 'follow the pattern of existing residential development', namely the run of 4 twentieth century bungalows to the north. Those bungalows potentially post-date the establishment of the AONB in 1966, albeit there is no definitive information before me in that respect.
24. There would, I acknowledge, be some intervisibility of the development proposed with the existing bungalows from certain vantage points, including along footpath HWS26. The site is also a small part of LCA 19D, a smaller part still of the AONB. Limited roadside hedgerow would need to be removed to provide for access.¹⁴ Landscaping, capable of being secured via condition were the scheme acceptable as a whole, would assist the scheme in assimilating with its surroundings over time.
25. As reasoned above, however, the site presently forms part of the staunchly rural hinterland to Weston Subedge (in its character, visually, and in terms of its relationships to its surroundings). At a broad-brush level, the Village itself is characteristic of a Cotswold morphology where settlements peter out into the countryside.
26. The site is presently open and natural, AONBs being established for their 'natural' beauty rather than their built development.¹⁵ In its present nature and context, the site also has a strong affinity with the characteristics of LCA 19D. Consequently the site might fairly be described as contributing relatively strongly, and positively, towards landscape character hereabouts.
27. In that context, the onus falls principally on an applicant to substantiate their case.¹⁶ Although apparently not requested by CDC, the proposal is not supported by thorough evidence in terms of likely landscape or visual effects (for example a Landscape and Visual Appraisal as is commonly undertaken in line with guidance in GLVIA3).¹⁷ Such evidence would have assisted in gauging the magnitude of effects that would result.
28. Nonetheless, and irrespective of the design of the dwellings themselves, the proposal would introduce substantial built development where none is present. That, along with the provision of access and the inevitable maintenance of the land around the proposed dwellings and associated domestic paraphernalia, would directly adversely affect the natural landscape context to the Village and would be visually discordant relative to present circumstances.
29. Whilst there would be certain moderating factors as set out in paragraph 24 above, the scheme would nonetheless fundamentally undermine the present character of the site and its contribution to landscape and visual character. That would be in conflict with the clear expectations of statute, and relevant provisions of LP policies EN1, EN2, EN4, EN5 and NPPF paragraph 182.

¹⁴ As described in the appellant's Arboricultural Impact Assessment, prepared by Urban Environmental Consultancy, ref. 220523_0041_ARB_V3, 22 May 2023.

¹⁵ Acknowledging the English landscape is inherently formed by virtue of human activity over many centuries and the AONB covers a broad swathe of land including various settlements and buildings.

¹⁶ Section 62(3) of the 1990 Act.

¹⁷ The Landscape Institute and Institute of Environmental Management & Assessment's Guidelines for Landscape and Visual Impact Assessment: Third edition (updated November 2021, 'GLVIA3').

30. I note that there is no relevant test that a scheme should not represent an 'overwhelming encroachment', the appellant's turn of phrase.¹⁸ In the abstract, given the extent of the AONB and countryside here, it is difficult to conceive of a type of development that could have such a substantial effect.

Historic significance

31. Noting my explanation of the statutory and national policy context relevant to heritage above, again in summary, amongst other things, and with varying emphases, LP policies EN1, EN2 and EN10 seek to ensure that development relates suitably to the historic environment. Theoretically landscape character and history are intertwined. That is particularly true in actuality here.
32. The list entry for the Scheduled Monument describes how it was a substantial manor at the time of the Norman invasion. It has an intricate history running up to its demolition,¹⁹ including that it was owned between 1279 and 1301 by Godfrey Giffard who is attributed with orchestrating the construction of the Church of St. Lawrence.²⁰
33. As reflected in the appellant's Heritage Assessment,²¹ and consistent with the surrounding topography, the stream to the south of the appeal site 'could be considered part of the moated complex' around the Scheduled Monument.²² That is notwithstanding that Weston Subedge and its surroundings reflect a long continuity of settlement.²³ The context in which archaeological evidence is found is, typically, crucial to furthering understanding.²⁴
34. The list entry for the Church aptly explains how, 'as with all the towered churches below the escarpment, [it] has landscape importance'. Following on from my reasoning in respect of the second main issue, the landscape surroundings in which the foregoing assets are experienced, of which the site represents part, contribute positively towards historic integrity and significance.
35. The Heritage Assessment accurately observes how, although there has been some strip farming and changes in land apportionment over time, 'the southern end of the village where the two monuments are located remain rural with very little modern development... therefore the original medieval rural setting of these monuments has been largely maintained'.²⁵ I agree.
36. In other words, the landscape setting of both the Scheduled Monument and Listed Building, largely authentically reflects in the present an historic rural setting which has little altered for centuries. That setting aids an appreciation and understanding of the context in which those assets emerged and evolved as the cornerstones of a rural village (albeit evidently an affluent settlement with layers of associative history).

¹⁸ Statement of case, paragraph 5.1.6.

¹⁹ The list entry indicating around 1800, paragraph 5.1.8 of the appellant's Heritage Assessment attributing its demolition to Civil War unrest (1642-1652).

²⁰ Described in the list entry as a member of Henry III's household and later Lord Chancellor of England and Bishop of Worcester.

²¹ Prepared by Red River Archaeology, ref. redriver2-514469, March 2023.

²² Heritage Assessment, section 1 'Summary'.

²³ Attested to by the scattered presence of remains from the prehistoric and particularly Roman era in the surrounding area.

²⁴ PPG Reference ID: 18a-041-20190723.

²⁵ Paragraph 5.8.2.

37. Seen through that lens the appellant accepts that there will be 'some impact on the setting of the listed building and the scheduled moated site'.²⁶ Whilst I acknowledge what the appellant refers to as the 'basic principle' of some recent development having occurred,²⁷ including at the neighbouring bungalows, there is no evidence of circumstances there. Moreover, in my view, the existence of recent development does not inherently justify more.
38. In short, the proposal would dilute the historic integrity of the landscape setting to the Scheduled Monument and Listed Building to the detriment of significance. An ability to readily appreciate the interwoven history of those assets and their landscape context would be eroded.
39. There is, furthermore, the potential for the disturbance of archaeological interest embodied in the site which may contribute towards an understanding of significance. Whilst effects in that respect could be moderated by archaeological investigation required via condition were the scheme otherwise acceptable, that would not entirely avoid the potential for harm (given that there is presently limited evidence in that regard informing scheme design).
40. On account of the relatively modest nature of the scheme, its surrounding context, and the extent of the settings of the Scheduled Monument and Listed Building, the magnitude of harm arising may fairly be described as 'less than substantial' with reference to NPPF paragraph 205 (and, potentially, towards the lower end of a spectrum within that categorisation). NPPF paragraph 208 guides that, in such circumstances, the extent of harm should be weighed against any public benefits. That is a balance to which I return (noting that NPPF paragraph 206 establishes that any harm, not just that which is substantial, should require 'clear and convincing justification').

Living conditions

41. LP policy EN2 sets out how development should accord with the Cotswold Design Code (LP Appendix D). The Design Code in turn refers to implications in terms of amenity.²⁸ Similarly, NPPF paragraph 135.f) sets out how planning should ensure 'a high standard of amenity for existing and future users'.
42. In their arrangement- following a loose established building line, plot sizes, and also broadly in respect of separation distances between respective side elevations- the proposed houses would be arranged consistently with the bungalows to the north. CDC have no objection to the design of the proposed dwellings *per se*; the appellant describing their appearance as 'a classical Cotswold design following the ethos of the Cotswold Design Code...'.
43. The fifth reason for refusal given in CDC's decision notice of 4 August 2023 in respect of application ref. 23/02007/FUL, however, relates to the potential effects of the proposal in respect of 'loss of light, loss of privacy and overbearing impact' in respect of the living conditions of the occupants of neighbouring Meadowside.

²⁶ Statement of case, paragraph 5.1.7.

²⁷ Ibid.

²⁸ Under section D.67 related to key design considerations.

44. Although the proposal would inevitably result in change, and accepting that living conditions are in large part contingent upon personal perception, I am not of the view that undue effects to privacy would occur. Plan no. 05 shows that the north facing elevation of house type 1 ('HT1'), the typology proposed next to Meadowside, would be blank rather than their being first floor windows. Boundary features could also mitigate effects in terms of visual privacy associated with ground floor windows, or the use of the plot proposed here.²⁹
45. The only reference to the implications of the scheme in terms of living conditions in the appellant's appeal statement is, however, that: 'the proposed dwellings will lie to the side of the existing dwellings and will not therefore look directly over neighbouring properties. In addition, they will not have an unacceptable impact in terms of light or overbearing impact'.³⁰ I disagree with that position (which is simply stated rather than robustly substantiated).
46. As above, the dwelling type proposed to be built next to Meadowside is HT1. There would be limited separation between the side elevations of the two, albeit broadly consistent with the prevailing pattern of development to the north. Importantly, however, plan nos. 03 and 05 show how HT1 would be a two storey property with a tall, steeply-pitched roof.
47. The height of HT1 would be significantly greater than that of Meadowside and other bungalows to the north. That difference in scale would, in my view, result in a clear adverse sense of enclosure to the occupants of Meadowside (setting aside any view from the latter across the appeal site towards the distant landscape). The interrelationship proposed in terms of building height would be markedly different from that which prevails here, resulting in an undue sense of being hemmed in.
48. Similarly, HT1 would be to the south, or south-south-east, of Meadowside. On account of its scale, potentially on account of boundary features also, the proposal would, in all likelihood, significantly reduce the natural light reaching Meadowside at certain times of day. That would be particularly apparent in respect of 4 south-facing windows at Meadowside (notwithstanding that those windows may not be the sole aspect from certain rooms and that some may serve essentially functional spaces of the property).
49. As with my reasoning at paragraph 27 in terms of landscape effects, there is no robust assessment before me of the inter-relationship between the development proposed and neighbouring properties (for example in terms of section plans, street scenes, or sunlight or daylight assessments). In the absence of such evidence I cannot reach a finer-grain assessment other than that the scheme would, in all likelihood, markedly and unacceptably affect neighbouring living conditions in respect of outlook and natural light in conflict with the provisions of LP policy EN2 and NPPF paragraph 135.f).

Other matters

²⁹ Noting that schedule 2, part 2, Class A to the Town and Country Planning (General Permitted) Development (England) Order 2015 as amended typically allows for the erection of boundary fences up to 2 metres above ground level without express planning permission.

³⁰ Paragraph 5.1.11.

50. Both the LP and NPPF seek to improve economic, social and environmental conditions.³¹ Different development plan policies invariably pull in different directions as the planning system is designed to address the foregoing, often competing, objectives. LP policy DS1, for example, seeks to enable the delivery of 'at least' 8,400 dwellings over the plan period, rather than reflecting a maximum. NPPF paragraph 70 moreover recognises the important contribution that may be made via small or medium sized sites towards meeting housing requirements, with NPPF paragraph 83 guiding that 'housing should be located where it will enhance or maintain the vitality of rural communities'. If implemented, the proposal would result in the delivery of 3 additional homes next to Weston Subedge, entailing social and economic benefits (including in supporting employment during construction and maintenance, and as future occupants would bring trade to local services and facilities).
51. Nevertheless, and notwithstanding the written ministerial statement of 30 July 2024 regarding potential future changes to the NPPF,³² the appellant does not counter CDC's position that they are presently able to demonstrate a forward supply of deliverable housing sites relative to needs of about 7.2 years' worth (or that, by consequence, NPPF paragraph 11.d) is not engaged).³³ Whilst neither LP policy DS1 nor the NPPF serve to constrain development beyond a particular level where it would be otherwise appropriate, there is presently no clear justification for diverging from the approach in the LP in guiding development proportionately throughout the District to certain locations.
52. Summarising my reasoning in respect of the main issues in addition to the foregoing, the proposal would be clearly harmful to the AONB, to historic significance, and to the living conditions of the occupants of Meadowside. I have noted how, in several instances, the evidence before me is also lacking, such that it has not been demonstrated that comparable benefits might not readily be achieved by a less harmful scheme. Even were the scheme acceptable in all other respects, noting that the site is at low probability of flooding and the associated documentation in respect of transport and ecology,³⁴ that would effectively be neutral in my assessment of the scheme (rather than carrying weight in favour of allowing the appeal).

Conclusion

53. Inherent in my reasoning in paragraphs 50 to 52 above is that neither the public benefits of the scheme with reference to NPPF paragraph 206, nor any other material considerations, carry sufficient weight to justify allowing the appeal relative to the harm that would result. Having considered the development plan as a whole along with all other relevant material considerations, I therefore conclude that the appeal should be dismissed.

Tom Bristow
INSPECTOR

³¹ LP section 5.0.1, NPPF paragraph 8.

³² Official record HCWS48.

³³ CDC statement of case, page 7.

³⁴ Transport Statement, prepared by Helix Transport Consultants, ref. 2209TN01B, 6 June 2023, a subsequent letter on behalf of Helix Transport Consultants Ltd. of 8 January 2023, and a Preliminary Ecological Appraisal, prepared by Cotswold Environmental Ltd., ref. CE00934, November 2022.