
Appeal Decision

Site visit made on 3 September 2024

by K Townend BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 September 2024

Appeal Ref: APP/G1630/W/24/3342446

Land adj. Lily Barn, Gretton Fields, Cheltenham, GL54 5HH

- 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 Duncan Ross-Lee on behalf of Laburnum Farm Estate against the decision of Tewkesbury Borough Council.
 - The application Ref is 23/00953/OUT.
 - The development proposed is erection of 3no. bungalows, along with associated development and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The planning application was submitted in outline with all matters, except for access, reserved. The Council determined the application on that basis. I have therefore taken any indication of appearance, landscaping, layout, or scale shown on the submitted drawings to be illustrative.
3. As part of the appeal, the appellant has submitted a Preliminary Ecology Appraisal¹ (the PEA). Annexe M of the Procedural Guide – Planning Appeals – England advises that if an applicant thinks that amending their application proposals would overcome the Council's reasons for refusal, they should normally make a fresh planning application. The appeal process should not be used to evolve a scheme. In considering whether to accept the additional information, I have had regard to Holborn Studios Ltd².
4. The PEA does not result in a fundamental change to the nature of the proposal over what was considered at the planning application stage. The PEA provides additional information to support the appellant's statement of case. Moreover, whilst I appreciate that the Council suggest that they did not receive the PEA the appellant's evidence confirms that it was sent to them with the other appeal documents. The PEA would, also, not alter the effect of the proposal on the neighbouring residents. Consequently, no party would be unfairly prejudiced and, I have, therefore, considered the PEA as part of the appellant's evidence in determining this appeal.

Main Issues

5. The main issues are:

¹ Cotswold Environmental Preliminary Ecological Appraisal, dated February 2024, ref CE001183

² Holborn Studios Ltd v The Council of the London Borough of Hackney [2017] EWHC 2823 (Admin)

- whether the proposed development would provide a suitable location for housing, having regard to the development strategy for the area and the accessibility of services and facilities;
- the effect of the proposed development on the character and appearance of the area, including the Special Landscape Area; and
- the effect of the proposed development on biodiversity.

Reasons

Location of development

6. The appeal site is a parcel of land within Gretton Fields which is outside of any of the defined settlements set out in either the Gloucester, Cheltenham, and Tewkesbury Joint Core Strategy 2011-2031 (the Core Strategy) or the Tewkesbury Borough Plan 2011-2031 (the BP). Therefore, for planning purposes, the site is within open countryside.
7. Policy SP2 of the Core Strategy sets out the settlement hierarchy and the distribution of development. The policy seeks to focus development in the urban areas of Gloucester, Cheltenham and Tewkesbury and the rural service centres, service villages and sites covered by any Memorandum of Agreement. Policy SD10 of the Core Strategy supports SP2 and also sets criteria for housing development on sites not within identified settlements. Part 4 iv) of Policy SD10 advises that other specific exceptions/ circumstances can be defined in the district or neighbourhood to permit housing development.
8. Policy RES3 of the BP provides the criteria for new housing outside settlement boundaries and seeks to restrict new residential development so as not to undermine the Core Strategy. Part 3 of Policy RES3 allows for very small scale development at rural settlements in accordance with Policy RES4.
9. Policy RES4 of the BP allows for very small scale residential development within and adjacent to the built up areas of other settlements. The purpose of Policy RES4 is to support the vitality of rural communities and the continued availability of services and facilities. This is set out in the first paragraph of the policy. Paragraph 3.29 of the supporting text advises that some rural settlements have 'everyday' facilities and the availability of these is important in helping to reduce unnecessary traffic.
10. The first criteria of Policy RES4 requires development to be of a scale that is proportionate to the size and function of the settlement and maintains or enhances sustainable patterns of development. The two parts of the policy are required to be provided together for any development to comply with this criteria. It is not the case, as the appellant seeks to assert, that if the development were to comply with the first part of the criteria that it would automatically comply with the second part. The policy is seeking to achieve small scale and sustainable development not just small scale development that might be in an inherently unsustainable location.
11. Gretton Fields does not have any services or facilities which would be maintained or enhanced through the development of three properties on the appeal site and the site is physically separated from Gretton, which is around 1.5km away. The road to Gretton is unlit and does not have footpaths until you get to the larger settlement. There are also sections where the roadside verges

are unmaintained and consequently any pedestrians or cyclists would have to share the carriageway with vehicles. The distance from the appeal site to Gretton, along with the lack of footpath, would make it highly unlikely that the future occupants of the development would walk or cycle to Gretton to access services or facilities.

12. Whilst I saw a bus stop at the entrance to the haulage yard near the appeal site, with detailed times for buses in both directions, and whilst the bus stops would be within comfortable walking distance of the appeal site, I do not have sufficient evidence that the bus service would provide a genuine choice of alternative modes of travel. The information provided on the bus stop and within the appellant's evidence indicates a limited bus service. Moreover, I do not have compelling evidence that the bus service remains as sustainable as it was at the time the Council Highway Development Management Officer supported the Permission in Principle application³ in 2021. For that reason, the decision on whether the site is well connected does not need to be the same as the advice that was given at that time.
13. My attention has been drawn to the previous permission for change of use of the land for short-stay holiday accommodation for ten units⁴. However, the vehicle movements to and from tourist accommodation would not include daily commuting to work or school or the same level of use of local services and facilities as open market dwellings. Furthermore, such accommodation would not necessarily be occupied all year round. Tourist accommodation and its vehicle movements are not comparable to open market housing and is also assessed against a different policy within the development plan. That consent is, therefore, materially different to the appeal before me.
14. Moreover, I have no compelling evidence before me that the tourism use of the site is no longer viable or sustainable. I visited The Royal Oak Inn and saw that the accommodation units, although similar, would provide a different offer to the accommodation approved at the appeal site which was for a wider range of units. Nevertheless, even if I were to accept that the tourist accommodation is no longer viable this would not justify an open market development on the site.
15. The use of the land for tourist accommodation does not make it a brownfield site as the units approved are not permanent structures. The previously approved use would, therefore, not fall within the definition of previously developed land set out in the annex to the National Planning Policy Framework (the Framework).
16. Due to the lack of connectivity to services and facilities, although the proposed development would be very small scale residential development it would not maintain or enhance sustainable patterns of development. The future occupiers of the proposed development would, therefore, heavily rely on private cars or deliveries. Consequently, the development would not meet the exception set out in Policy RES4 of the BP. Moreover, the scheme would not promote sustainable modes of transport or contribute towards reducing carbon emissions.
17. For the above reasons, the site would not be a suitable location for housing, having regard to the development strategy for the area and the accessibility to

³ Council reference 21/00322/PIP

⁴ Council reference 21/00981/FUL

services and facilities. The appeal proposal would, therefore, fail to comply with Policies SP2, SD4, SD10 and INF1 of the Core Strategy and Policies RES3, RES4 and RES5 of the BP. Collectively these policies seek to limit development outside the identified settlements, support proposals which, amongst other matters, are of a scale that is proportionate to the size and function of the settlement and which maintain or enhance sustainable patterns of development, requires development to prioritise movement by sustainable transport modes, ensure accessibility to local services for pedestrians, cyclists, and those using public transport and enable travel choice for residents and commuters.

18. I also find that the proposal would not comply with the guidance within the Framework and specifically paragraphs 83, 109 and 114 which, taken together, seek to promote sustainable development in rural areas, manage patterns of growth and ensure that appropriate opportunities can, or have been, taken to promote sustainable transport modes.

Character and appearance

19. The appeal site is a parcel of land adjacent to the property known as Lily Barn. At the time of my visit the site contained four holiday cabins. However, the holiday cabins and the other approved tourist accommodation does not form permanent development and would, therefore, not be a form of development that would urbanise the site. Between the appeal site and the road are two other detached houses. The appeal site, Lily Barn and the adjacent two detached houses are all served off a driveway which runs between two houses which front the road.
20. The existing houses in Gretton Fields mostly front the road, albeit they are of different sizes and designs and with varying length gardens. There are only one or two exceptions to the linear form of the immediate area, one of which is formed by Lily Barn and the adjacent two detached houses. Next to the appeal site is an established haulage yard which includes two large buildings and a large area of hardstanding. The area around the houses and other uses is agricultural and open fields.
21. Although the tourist accommodation does not urbanise the area, the appeal site is enclosed on three sides by existing built development. It is also enclosed with well-established hedges and does not provide any views out from the site to the open countryside or any views from outside into the site. Gaps between other houses along Gretton Fields offer views of the countryside between the houses which maintains the open and rural character of the area. However, the view towards the appeal site already includes back land development in the form of Lily Barn and the two detached houses. Although those two dwellings were approved as an exception to policy⁵, as development of a brownfield site and included the removal of unsightly industrial buildings and an un-neighbourly use, they have also changed the character of this part of Gretton Fields.
22. In that regard the appeal site is materially different to the appeal at Siwa⁶ quoted by both main parties where the site was situated between existing road

⁵ Council reference 17/00268/FUL

⁶ APP/G1630/W/22/3307174

fronting housing and where the proposed development would have been out of keeping with the context of the site.

23. The appeal site would not extend significantly beyond the existing built development already situated to the rear of the road fronting houses. Moreover, the proposal would not introduce development into an area where views of the open countryside are currently available. The development would be read as part of and alongside the existing housing accessed off the same driveway and would not urbanise an area which is currently viewed as open countryside. The proposed additional landscaping and vernacular materials would also ensure the development fits in with the surrounding area. In that regard, I find that the proposed development, including any associated infrastructure and domestic paraphernalia, would complement the form of this part of Gretton Fields and would be well related to existing buildings.
24. Furthermore, the development of the appeal site would not cause harm to any features of landscape character which are of significance, would maintain the quality of the natural and built environment and its visual attractiveness and has the opportunity to enhance landscape character. Consequently, the proposal would not harm the Special Landscape Area protected by Policy LAN1 of the BP.
25. For these reasons, I find that the proposed appeal development would not adversely affect the character and appearance of the area, including the Special Landscape Area and would, therefore, comply with the relevant requirements of Policies SD4 and SD6 of the Core Strategy which, taken together, require development to respond positively to, and respect the character of the site and its surroundings, enhance local distinctiveness, address the urban structure and grain of the locality in terms of layout, and protect landscape character and avoid detrimental effects.
26. The proposal would also comply with relevant parts of Policies RES5 and LAN1 of the BP which require new housing to be of a design and layout that respects the character, appearance and amenity of the surrounding area, be capable of being well integrated, respects the form of the settlement, would not appear as an unacceptable intrusion into the countryside, and requires development within Special Landscape Areas to, amongst other matters, not cause harm to those features of the landscape character which are of significance.
27. For the same reasons, the proposal would contribute to and not harm the natural and local environment or the intrinsic character and beauty of the countryside, in accordance with Chapter 15 of the Framework.

Biodiversity

28. I saw at my visit that the appeal site is predominately mown grass, gravel path and gravel car park. This corresponds with the information provided within the submitted PEA. There are trees around the outside edge of the site. However, from the evidence before me these would all be retained.
29. Circular 06/2005⁷ states that *"it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted,*

⁷ ODPM Circular 06/2005: Government Circular: Biodiversity and Geological Conservation – Statutory Obligations and their impact within the planning system.

otherwise all relevant material considerations may not have been addressed in making the decision". Ecological mitigation should only be employed where it is not possible to avoid the impact. Furthermore, mitigation measures should be specific to an identified harm.

30. The submitted PEA acknowledges that the survey was conducted outside the recognised optimal season for plant identification and that the absence of species does not preclude its presence. I also note that the survey was only carried out on one day in January which would not be the optimal time for surveying for a number of protected species. Although the PEA has sought to advise on the potential for all protected species within the site the survey was limited. I cannot be certain that the survey was sufficient to fully understand the baseline ecological potential of the site. Consequently, it is not possible to know whether there is an impact on biodiversity, whether there is an opportunity to avoid the impact, or whether the proposed mitigation set out in the PEA would be sufficient or necessary.
31. Based on the evidence before me I cannot be certain that the site has low ecological potential or that any harmful effects arising from the proposal could be adequately avoided or mitigated.
32. In the absence of a PEA carried out at the appropriate survey times the proposal has the likelihood to adversely affect biodiversity and would, therefore, be contrary to the requirement of Policy SD9 of the CS and Policy NAT1 of the LP which, taken together, seek to protect and enhance biodiversity and require new development to contribute positively to biodiversity through delivering biodiversity net gain. For the same reasons, the proposal would also be contrary to the requirements of the Framework which requires that if significant harm to biodiversity cannot be avoided that it should be adequately mitigated, or as a last resort, compensated for.

Other Matters

33. Interested parties have raised concerns regarding, amongst other matters, flooding, and the living conditions of the future occupants of the proposed development from the adjacent haulage yard. These are not matters which are in dispute between the main parties and both were addressed in the Officer's report. I do not have any substantive evidence that the development of the site would increase flood risk and no evidence that the development of the site could not be designed so as to minimise noise and smells from the adjacent business.
34. Policy RES5 of the BP requires new housing development to make provision for the delivery of efficient and effective household waste collection services. The appeal site is over 30 metres from the highway and, therefore, beyond the distance recommended within Manual for Streets as an appropriate distance for occupants to be expected to move their bins. However, at my visit I saw that the access driveway, for most of its length, is of sufficient width for two cars to pass and includes an area of gravel hardstanding along its one edge. The proposal also retains a large area of hardstanding next to Lily Barn. The precise details of waste collection arrangements could be secured as part of the reserved matters application and I have no compelling evidence that an appropriate waste collection facility could not be provided within the appeal site.

Planning Balance

35. Both main parties agree that the Council cannot currently demonstrate a five-year housing land supply with both parties agreeing the shortfall is in the region of 3.23 years. Paragraph 11d) of the Framework therefore applies.
36. Policies SP2, SD4, SD9, SD10 and INF1 of the Core Strategy and Policies RES3, RES4, RES5, LAN1 and NAT1 of the BP are the most relevant in considering the proposal. Paragraph 225 of the Framework confirms that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework. Moreover, there is nothing within Paragraph 11d) that requires the consideration of the age of the policy when assessing whether to apply 11d).
37. As far as the policies seek to limit development in the countryside to that which protects its character and to that which ensures sustainable development in rural areas by locating housing where it would enhance or maintain the vitality of rural communities, they are broadly in accordance with the Framework. Policy SP2 of the Core Strategy and Policies RES3 and RES4 do not seek to prevent all development outside of settlements and would allow certain forms of development.
38. I note the conclusions of the Inspector in the decision at Fleet Lane⁸. However, that scheme was for a larger scale development near to an identified service village and with other planning benefits added into the weight in favour of the development. The Fleet Lane appeal is, therefore, materially different to the appeal before me.
39. In determining this appeal, I have given the conflict with the local policies significant weight, even though the shortfall in housing supply is marginally worse than it was in the Fleet Lane appeal. Consequently, the proposed development would, therefore, conflict with the development plan as a whole.
40. The proposal would accord with paragraph 60 of the Framework which seeks to boost the supply of housing. Moreover, the proposal would also provide economic benefits both during and post construction, no harm to the living conditions of neighbouring residential properties, and environmental benefits from the provision of electric vehicle charging points.
41. However, although I afford significant weight to the provision of these new houses, as only three dwellings are proposed this benefit is limited when weighing the merits of the scheme. I therefore afford significant weight to the limited benefit the development would make to addressing the housing shortfall.
42. The appeal has been submitted with a Preliminary Ecological Appraisal, which has assessed the potential impact on ecology and recommended mitigation measures and additional landscaping within the development, which would provide biodiversity and ecology improvements. However, I cannot be certain that the PEA has identified all of the potential protected species affected by the proposal and that the mitigation proposed is sufficient or necessary. I am, therefore, only able to give limited weight to the enhancements.

⁸ APP/G/1630/W/21/3280979

43. On the other side of the balance, the proposal would result in environmental and social harm due to the lack of accessibility to services and facilities through alternative means of travel other than the private car. This harm is significant and afforded significant weight.
44. The harm that I have found would, therefore, significantly, and demonstrably outweigh the limited benefits that would arise from the development. As a result, the presumption in favour does not apply.

Conclusion

45. For the reasons given above the appeal should be dismissed.

K Townsend

INSPECTOR