

Appeal Decision

Site visit made on 30 July 2024

by K Reeves BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 October 2024

Appeal Ref: APP/P1615/W/23/3331565

Land on the North West side of Blue Rock Crescent, Bream GL15 6LW

- 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 Kevin Fossali of H J & W Land Trust against the decision of Forest of Dean District Council.
 - The application Ref is P0346/23/OUT.
 - The development proposed is the erection of 4 dwellings, amendment to access.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application has been submitted in outline with all matters, except access, reserved for future consideration. I have dealt with the appeal on that basis.
3. A revised National Planning Policy Framework (the Framework) was published on 19 December and updated on 20 December 2023. Further written comments regarding these changes were submitted by the main parties. This decision is based on the current Framework and has taken account of the further representations made on this.

Main Issues

4. The main issues are:
 - the effect of the proposed development on the character and appearance of the site and the surrounding area;
 - the effect of the use of the proposed access on the safety of pedestrians, cyclists and drivers using Blue Rock Crescent;
 - the effect of the proposed development on protected species;
 - whether the development would provide satisfactory living conditions for the future occupants having regard to the size of outdoor private amenity space; and
 - the effect of the development on the living conditions of the occupiers of neighbouring residential properties having regard to privacy.

Reasons

Character and appearance

5. The appeal site is a field in the village of Bream. It has a single vehicle field access off a country lane that links High Street with Whitecroft Road. Residential gardens adjoin two of the site boundaries and adjacent to another boundary is a track that serves residential properties with some of those properties overlooking the site.
6. The Policies Inset Map that forms part of the Forest of Dean Allocations Plan 2006 – 2026 (Adopted June 2018) (AP) shows that the site is designated as an Important Open Area (IOA). Policy CSP.9 of the Forest of Dean Core Strategy Adopted Version (Adopted February 2012) (CS) seeks to protect land that is identified as being of amenity value. The policy goes on to state that exceptionally, development on land that does not contribute to the character of an area and is therefore of little amenity may be considered. The Council's Important Open Areas Keynote explains that IOAs can include enclosed space without public access and small fields in some settlements are particularly important in contributing to the overall make-up of the village concerned.
7. The undeveloped and open characteristics of the site amongst the existing built environment means that it makes a positive contribution in its current form to the character and appearance of the area. A key characteristic of the site is that it is a visually open space that punctuates the existing development along the road corridor. The proposal would significantly alter the site's character and sense of place. The proposal by virtue of the quantum of development and the likelihood of the proposed residential properties covering the majority of the site would result in the unacceptable erosion of this important open space and the character and appearance of the immediate surrounding area.
8. For these reasons, the proposed development would cause unacceptable harm to the character and appearance of the area. Consequently, the proposal would conflict with Policies CSP.1 and CSP.9 of the CS and Policies AP.1 and AP.4 of the AP, which collectively seek, in part, for development to establish or support a strong sense of place, conserve, preserve or respect the important characteristics of the environment and protect amenity land.

Highway safety

9. The proposed development would be served by the existing access into the site, which is off a single vehicle width lane, Blue Rock Crescent. Taking the 85th percentile speed from the speed survey data, the distance of visibility (the Y distance) along the lane should be 16 metres in both directions.
10. The 'layout plan' shows the 16 metres Y distance to the centre of the lane to minimise the loss of hedgerow. However, Manual for Streets 2 states that a more accurate assessment of visibility splay is made by measuring to the nearside edge of the vehicle track. As such, the details on the plan do not demonstrate that acceptable visibility for vehicles egressing from the site can be achieved. Furthermore, there are no details showing a swept path for vehicles entering and exiting the site to demonstrate that two vehicles can

pass each other in the entrance to the site. The plan does not show any alterations to the configuration of the site entrance.

11. The appellant suggests that this is a matter that can be finalised at the reserved matters stage. However, the access is not a reserved matter and therefore needs to be considered in detail at the outline stage of the process. I also note the comments made by the Highway Authority as a pre-application response and that it raised no objections to the proposal. However, in my judgement, the appellant has not sufficiently demonstrated that the proposal would be achievable without causing harm to users of the public highway.
12. For these reasons, the proposed development would have a harmful effect on highway safety. Consequently, the proposal would conflict with the Framework, insofar as it seeks to ensure safe and suitable access to sites for all users and the prevention of unacceptable impacts on highway safety.

Protected species

13. The proposed development would involve the removal of sections of hedgerow and over 0.1 hectares of overgrown grassland. I note that the appellant describes the site on the submitted Biodiversity Self-Assessment Form as improved grazed grassland, but at the time of my visit the site had clearly not been grazed for a significant period of time. The form indicates that it is likely that the development would have an impact on species, particularly foraging bats, breeding birds, reptiles, badgers, dormice and hedgehogs, and that a Preliminary Ecological Assessment (PEA) may be required.
14. It is apparent that no PEA has been carried out. The appellant has explained the reasoning for not providing a PEA report, but it is not clear whether these comments have been compiled or informed by a person who is a suitably qualified ecologist or similar. Therefore, the submitted evidence does not sufficiently demonstrate that protected species are not present on site, nor does it show that wider impacts on protected species would not result from the proposed development, such as foraging corridors for bats.
15. A PEA report was not requested by the Council at validation or during the determination of the application. The Council's ecologist appears to have not provided comments in relation to the proposal. However, these matters are not determinative as to the acceptability of the proposal and its effect on protected species. I have therefore considered it on its merits, based on the evidence before me.
16. The Planning Practice Guidance indicates that an ecological survey may be appropriate where, for example, protected species may be present. Government Circular 06/2005 (Biodiversity and Geological Conservation), referenced within the provisions in the Framework relating to habitats and biodiversity, sets out amongst other aspects that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the development, is established before planning permission is granted. Protection is also afforded to habitats and species by the Wildlife and Countryside Act 1981 (as amended), and the Natural Environment and Rural Communities Act 2006 requires that public authorities must, in

exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity. In addition, European protected species have full protection under The Conservation of Habitats and Species Regulations 2017.

17. Without a PEA before me that assesses the potential ecological impacts of the proposed development and sets out mitigation measures to address those potential impacts, I cannot be certain that the conservation status of protected species would be safeguarded as part of the appeal proposal.
18. For these reasons, the proposed development has the potential to harm protected species and no mitigation has been proposed. Consequently, the proposal would conflict with Policies CSP.1 and CSP.2 of the CS and Policies AP.1, AP.7 and AP.8 of the AP, which collectively seek, in part, to safeguard and enhance the biodiversity of development sites and to protect and provide net gains for species and habitats.

Living conditions for future occupants

19. The Forest of Dean Residential Design Guide (1998) seeks to achieve over 100 square metres of rear garden space per dwelling. The submitted plans do not provide an indicative layout for the four proposed dwellings and there is therefore no indication of the potential size of the dwellings. Whilst it is acknowledged that the final details for the dwellings and their respective gardens will be considered in more detail as part of an application for reserved matters, given the extent of the site and the proposed amount of development, it appears that rear gardens of an appropriate size could be provided as part of the site layout.
20. For these reasons, the details before me indicate that satisfactory living conditions for the future occupiers of the proposed dwellings can be provided in respect of the size of outdoor private amenity space. Consequently, the proposal would therefore comply with Policy AP.4 of the AP, insofar as it seeks to respect the amenity of residents and to create safe and accessible environments. The proposal would also comply with the advice in the Residential Design Guide where it expands on the requirements relating to size of gardens. Additionally, it would comply with the Framework, insofar as it seeks to achieve a high standard of amenity for future users of development.

Living conditions of existing occupants

21. As the proposed dwellings would be constructed on a site that has boundaries with existing dwellings and gardens, there is the potential for the occupiers of the neighbouring properties to have their current level of privacy reduced as a result of the proposed development. Given that there is no indicative layout of the development, it is difficult to fully assess the effect on the living conditions of the occupiers of existing properties. However, given the nature of the site and the relationship and orientation of adjacent properties and the amount of development, reasonable levels of privacy could be achieved through an appropriate layout.
22. For these reasons, the details before me indicate that the satisfactory living conditions of the occupiers of neighbouring residential properties can be

maintained when having regard to privacy. Consequently, the proposal would therefore comply with Policy AP.4 of the AP, insofar as it seeks to respect the amenity of residents. The proposal would also comply with the advice in the Residential Design Guide where it expands on preventing loss of privacy. Additionally, it would comply with the Framework, insofar as it seeks to achieve a high standard of amenity for existing users of development.

Planning Balance

23. The Council accepts it cannot demonstrate a five-year housing land supply. Following the revision of the Framework, where authorities meet the requirements of Paragraph 226 of the Framework, they only need to demonstrate a four-year housing land supply (4YHLS). Despite this, the Council cannot demonstrate a 4YHLS as the evidence indicates that the current land supply is approximately 3.75 years.
24. I have identified conflict with Policies CSP.1, CSP.2 and CSP.9 of the CS and Policies AP.1, AP.4, AP.7 and AP.8 of the AP. These are consistent with the Framework insofar as it seeks to add to the overall quality of the area, be visually attractive as a result of layout and appropriate and effective landscaping, be sympathetic to local character, including the surrounding built environment, and to conserve and enhance the natural environment. Accordingly, I apportion considerable weight to the policy conflicts and associated harm that would be caused as a result of the harm to the character and appearance of the area and the potential to harm protected species with no mitigation being proposed.
25. Four residential units would make a moderate contribution to the housing supply situation and is a benefit that therefore attracts moderate weight. There would also be associated social and economic benefits through providing support to the local economy (including during the construction phase) and local community facilities. However, such contributions would be limited given the small-scale nature of the development under consideration.
26. I have not found material harm in relation to the effect on the living conditions of future occupiers of the proposed development or the effect on the living conditions of the occupiers of neighbouring dwellings, but the absence of harm is a neutral factor.
27. Consequently, I find that the adverse impacts of the scheme arising from the previously identified harm would significantly and demonstrably outweigh the scheme's benefits when assessed against the policies of the Framework as a whole.

Conclusion

28. For the reasons given above, the proposed development would conflict with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Accordingly, the appeal should be dismissed.

K Reeves INSPECTOR