



Appeal Decision

Site visit made on 11 November 2024

by Stuart Willis BA Hons MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 November 2024

Appeal Ref: APP/G1630/W/24/3340723

Land to the north-west of A48, Minsterworth Village

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant technical details consent.
 - The appeal is made by BTM Developments Ltd against the decision of Tewkesbury Borough Council.
 - The application Ref 23/00259/FUL, sought consent pursuant to permission in principle Ref 20/00081/PIP.
 - The development proposed is the erection of 7 dwellings and associated access, external works and landscaping.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by BTM Developments Ltd against Tewkesbury Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The proposal is for Technical Details Consent following the grant of Permission in Principle. The Planning Practice Guidance advises that this is an alternative way of obtaining planning permission for housing-led development. The permission in principle has established that the location, land use, and amount of development is suitable in principle. The Technical Details Consent that is the subject of this appeal can consider the remaining detailed matters but cannot reopen what has been agreed at the Permission in Principle stage. I have determined this appeal on that basis.

Main Issues

4. The main issues are:
 - Whether the proposed development would make appropriate provision for affordable housing,
 - The effect of the proposed development on biodiversity,
 - The effect of the proposed development on the character and appearance of the area,
 - The effect of the proposed development on highway safety; and
 - The effect of the proposed development on flooding.

Reasons

Affordable Housing

5. Saved Policy SD12 of the JCS¹ states that where a development site has been divided into parts, or being delivered in phases, the site will be considered as a whole for the purpose of determining the appropriate affordable housing requirement. Affordable housing is sought on sites of 11 dwellings or more. It goes on to state that if a development cannot deliver the full affordable housing requirement, a viability assessment, conforming to an agreed methodology will be required and should be provided in full.
6. SD12 forms part of the development plan and its requirements do not need to be duplicated in Policy RES12 of the Local Plan². That policy states that new residential development will be required to contribute to the provision of affordable housing in accordance with the Framework and Policy SD12 of the JCS on sites of 10 or more dwellings. That the Framework is silent on combining sites does not indicate Policy SD12 is inconsistent with it.
7. The Framework states provision of affordable housing should not be sought for residential schemes that are not major developments. However, if the adjacent site, which already has permission for housing development, and this appeal site were combined it would constitute a major development.
8. Therefore, there is a need to look at whether the appeal scheme and adjacent one need to be considered as a whole. No specific criteria are set out for how this is to be considered in Policy SD12 of the JCS, however, case law³ provides an indication of factors to consider.
9. Although separately consented, the sites form part of the same field enclosure with no obvious distinction between them and the post and wire fencing not appearing to correspond to the site boundaries. The proposals would have a similar layout style and house type designs. They would also use the same access and access road. This would give the appearance of the appeal scheme forming part of, and being a continuation of, the adjacent site. Moreover, the adjacent scheme includes a drainage mound, and highways drain connection, that the current appeal proposal would use. The Rappor Technical Note refers to the appeal scheme being Phase 2 and that calculations were based on 'both phases of the development'. Similarly, plans are annotated as 'Phase 2'.
10. With regard to ownership, while the applicants are different, it is stated that there is a link and no clear explanation of this has been provided. The appeal form states "The application site should be edged or shaded in red and any other adjoining land owned or controlled by the appellant (if any) edged or shaded blue." The submitted plans, including that provided at appeal stage to show the precise area of the site, show the adjacent site within the blue line. The approved plans for the adjacent site mirror this by showing the appeal site in the blue line with the adjacent site edged in red.
11. As such, whether the subdivision was deliberate or not, the sites should be considered as a whole. Whether the appeal site is over 0.5 hectares or not as

¹ Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011-2031

² Tewkesbury Borough Local Plan 2011-2031

³ New Dawn Homes Ltd v Secretary of State for Communities and Local Government & Tewksbury Borough Council [2016] EWHC 3314

shown by the red line application site, or if the access and drainage areas were included, the total number of units would exceed the minimum set out in Policy SD12 and RES12.

12. As a result, affordable housing should be sought subject to viability. While it is said the sum requested by the Council would extinguish the entire site value, there are limited details before me over the costs and revenues of the development. In the absence of detailed viability analysis, it has not been shown that the full, or a lesser contribution towards affordable housing is unviable.
13. Consequently, the proposed development would not make appropriate provision for affordable housing. The scheme would fail to accord with Policy SD12 of the JCS and Policy RES12 of the Local Plan where they require affordable housing provision.

Biodiversity

14. Policy NAT1 of the Local Plan states that proposals that will conserve, restore and enhance biodiversity will be permitted. Schemes leading to loss, deterioration or harm to features are only permitted under specific circumstances, including that measures are provided to avoid, mitigate or compensate for any adverse effects.
15. Policy SD9 of the JCS states biodiversity resources will be protected and enhanced and that harm to biodiversity should be avoided, mitigated on site or exceptionally enhanced off-site. No clear evidence of exceptional circumstances has been put forward.
16. The Preliminary Ecological Appraisal refers to the hedgerow being partially removed as part of the works. Planting species rich hedge sections along boundaries is one option that which it is said could significantly contribute to net gain. Notwithstanding this, it is not clear where and how much of the hedgerow would need to be removed and to what extent any loss would be.
17. Moreover, while the Proposed Landscaping Plan provides some indicative positioning of features, there are no exact details of planting and I cannot be certain that the compensatory planting on site would be sufficient.
18. It has also been suggested the anticipated scheme may include off site elements. Again, no precise details of what would be done or where this would take place or mechanisms to secure it have been provided. As such, it would not be reasonable to impose a condition given the uncertainty over the content of any scheme and what any off site works may include.
19. Therefore, I cannot be certain that the proposed development would avoid harm to biodiversity. It would be contrary to Policy SD9 of the JCS and Policy NAT1 of the Local Plan as set out above.

Character and Appearance

20. Near the appeal site, properties are generally set back from but orientated to face the main road, often in linear plots with large rear gardens. However, this is by no means a wholly consistent arrangement. There is variation, including often more modern properties in smaller plots facing their internal cul-de-sac

roads. Even with the older properties there is no consistent plot size, scale or appearance of property, and spacing between them varies.

21. The proposed development would be adjacent to an as yet undeveloped cul-de-sac arrangement with properties set back and some facing the internal road rather than the main road. This appeal scheme would be read as following on from the adjacent scheme and not appear discordant with the pattern of development. Although some plots would be smaller than the adjacent scheme, they would not be significantly different or appear cramped in comparison. The proposed built form would be closer to the road than the adjacent scheme, although the set back would still be greater than some nearby properties, including Redlands Barn.
22. The appearance and scale of the proposed dwellings and their materials would draw on aspects of nearby built form such as the other modern cul-de-sac forms of development in the area. The proposed garages are generally set back from the front building line and not of a significant scale. As such, they and the properties themselves would not appear incongruous with the varied form and appearance of properties along this part of the main road.
23. Being at a higher level than the main road, elements of the appeal scheme would be seen along parts of it and some existing properties. Domestic paraphernalia in views from the main road would not be untypical given the numerous access points along it allowing views into plots. In any event, a landscaped area and the internal road would create some set back from the main road and would screen low level paraphernalia. This would retain the often-spacious streetscene along the main road. Conditions could be imposed to require further landscaping details.
24. While this proposal will inevitably lead to a change in the existing undeveloped field, it would be seen with and appear part of the existing development along the main road and the adjacent scheme.
25. As such, the proposed development would not harm the character and appearance of the area. It would accord with Policies SD4 and SD10 of the JCS and RES5 of the Local Plan. These, in part, seek to ensure schemes respond positively to, and respect local character, with the site and surroundings and be of good design.

Highway Safety

26. Much of the access road to the proposal is not included within the application site and the access itself not within the 'blue line'. However, while not constructed as yet, the plans clearly show that access would be from that approved at the adjacent site. There would be sufficient visibility at the access for road users. The road layout and width is appropriate to prevent conflict between vehicles for the total number of units and for them to turn within the site.
27. Measurements were requested regarding some aspects of the layout within the appeal site. However, plans were provided showing the extent of the carriageway and footway along with their positions. Although footways do not extend across the whole of the site, vehicle speeds towards the end of the cul-de-sac road would likely be slow and of limited frequency. In addition, the carriageway and footways appear comparable in size to that of the approved

adjacent scheme. Sufficient parking provision is made within the plots. As such, there would not be on street parking and vehicles would be able to manoeuvre and pass or wait without causing obstruction or danger to road users.

28. In light of the above, were the appeal to be allowed conditions could be imposed to secure matters such as access, parking, turning facilities and the retention of these as necessary.
29. Therefore, the proposed development would not harm highways safety. It would comply with Policy TRAC1 of the Local Plan and Policy INF1 of the JCS. These, amongst other things, aim to ensure safe and efficient access to the highway network is provided along with good quality pedestrian routes.

Flooding

30. The Rappor Technical Note indicates that drainage calculations have been based on both the appeal scheme and adjacent site. This includes a mound in the same position as was indicated in the permission for the adjacent site. There are clear details of a potential scheme and there is no compelling evidence to indicate this, or an alternative drainage scheme would be unfeasible. Any additional points of clarification, and future management of a drainage scheme could be addressed by condition, were the scheme to be allowed. That part of the drainage scheme is outside the application site and the 'blue line' land would not prevent the imposition of a Grampian style condition.
31. As such, the proposed development would not increase the risk of flooding. It would accord with Policies INF2 of the JCS and ENV2 of the Local Plan where they require developments to avoid and manage risks from flooding.

Other Matters

32. The conduct of the Council is not a matter that affects my findings on the main issues.
33. The proposal would contribute to housing supply and mix in an area where there is currently under supply. The benefit would be moderate given the scale of the scheme and extent of the shortfall. There would also be social and economic benefits associated with the build and occupation of the development. Given the scale of the scheme, these factors attract small weight.
34. The proposal has not demonstrated it is unviable with provision of at least some affordable housing contribution. Policy RES12 of the Local Plan refers to a need for affordable housing provision across the JCS area. While the threshold of 11 or more units stated in Policy SD12 of the JCS is not consistent with the Framework, the scheme when considered as a whole with the adjacent scheme exceeds the threshold in both local development plan policies and the Framework. That the Framework does not make reference to aggregating sites, does not rule it out. Consequently, for the purposes of this appeal SD12 and RES12 are broadly consistent with the Framework, and I give the conflict with them substantial weight.
35. The appeal scheme has failed to demonstrate that appropriate mitigation or compensation can be provided for biodiversity loss. Insofar as they relate to

this appeal, Policy NAT1 of the Local Plan and SD9 of the JCS are broadly consistent with the aims of the Framework with regard to biodiversity. Due to the nature and extent of the biodiversity features of the site, the conflict with these policies attracts moderate weight.

36. Therefore, the proposal would be contrary to the development plan as a whole.
37. The Council are currently unable to demonstrate a 5 year supply of housing land, with the level said to be 3.24 years. 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 proposed, as outlined in paragraph 11d)i.
38. The proposal would align with the aims of the Framework to significantly boost the supply of housing and that small-scale developments can make an important contribution to meeting the housing requirement. Due to the extent of the shortfall and the number of units proposed this benefit would be moderate. Economic and social benefits associated with the scheme align with those elements of the Framework. I give these each small weight due to the scale of the scheme.
39. The Framework sets out that where major development involving the provision of housing is proposed, planning policies and decisions should expect affordable housing provision and that the needs of groups with specific housing requirements are addressed, including affordable housing. Due to the identified need in the development plan, I give the conflict with this substantial weight. The Framework also seeks to minimise impacts on, and provide net gains for, biodiversity. I afford the conflict with this moderate weight due to the size and features of the site.
40. As a result, the adverse impacts of the development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.

Conclusion

41. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it.
42. For the reasons given above the appeal should be dismissed.

Stuart Willis

INSPECTOR