
Appeal Decision

Site visit made on 20 February 2025

by **B Phillips BSc MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 02 April 2025

Appeal Ref: APP/G1630/W/24/3355946

Land Rear Of Mount View, Ash Lane, Down Hatherley, Gloucestershire GL2 9PS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for outline planning permission
 - The appeal is made by Newcroft Homes Ltd against Tewkesbury Borough Council.
 - The application Ref is 24/00273/OUT.
 - The development proposed is for 6No. dwellings.
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Decision

1. The appeal is allowed and outline planning permission is granted for 6No. dwellings at Land Rear Of Mount View, Ash Lane, Down Hatherley, Gloucestershire GL2 9PS in accordance with the terms of the application, Ref 24/00273/OUT, and the plans submitted with it, subject to the conditions in the attached schedule.

Applications for costs

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

Preliminary Matters

3. I have amended the description of development above, removing wording that does not describe development.
4. The application is in outline with access and layout to be considered as a detailed matter, with appearance, scale and landscaping reserved for future consideration.
5. Whilst drawing 02(b) – (March 2024) is annotated as indicative, the appellant has confirmed that this illustrates the proposed layout for the scheme. The Council has considered it as such and so shall I.
6. The appeal is against a failure of the Council to give notice of its decision on the planning application Ref 24/00273/OUT within the prescribed period. As such, there is no decision notice.
7. The Council have indicated that had they would have been minded to refuse the application had they made a formal determination, and raise a number of issues. These have informed the main issue for this appeal. The issue of drainage (including foul drainage) was raised, however following discussions with the appellant the Council has confirmed that it is satisfied that this issue is addressed and no longer wishes to contest this particular issue (previously reason for refusal 1).

8. A legal agreement has been submitted which makes provision for a financial contribution to mitigate the effects of the proposal on the Cotswold Beechwoods Special Area of Conservation (SAC). This is addressed below.
9. The Government published in December 2024 a revised version of the National Planning Policy Framework (the Framework). Both main parties have had opportunity to comment on the matter and I have taken into account any representations made.

Main Issues

10. As such, the main issue in this case is the effect of the proposal on protected species.

Reasons

11. Policy SD9 of the Gloucester, Cheltenham and Tewksbury Joint Core Strategy 2011-2031, (2017) (JCS) seeks to protect and, wherever possible enhance biodiversity, including wildlife and habitats. Policy NAT1 of the Tewksbury Borough Plan 2011-2031 (2022) (BP), seek to prevent the loss, deterioration or harm to features, habitats or species of importance to biodiversity.
12. The appeal site is located within an amber risk zone for Great Crested Newts (GCN), as an eDNA survey and data from the local record centre illustrate that GCN are widespread throughout the locality. Great crested newts are designated as European Protected Species under the Habitats Regulations¹.
13. The submitted ecological assessment² concludes that the presence of a small pond in the rear garden of the adjoining neighbour, close to the eastern boundary hedge, means that GCN cannot be entirely discounted from this boundary feature, but there is no suitable habitat on the site itself and they are considered to be absent from the site interior.
14. Landscaping is reserved for future consideration and the hedgerow could be secured as being retained at that stage to ensure that very little potential habitat would be affected. The ecological assessment sets out that precautionary measures would be undertaken during any site clearance and ground works. A condition securing these measures is recommended. This would provide a proportionate level of protection, given the site characteristics, to avoid any significant issues of disturbance to individual animals that may occasionally roam onto the site.
15. Where works would harm this species or its habitats, a licence is required in order to make those activities lawful. Natural England is the licensing authority and has granted GNC 'District Licences' to certain Councils in England. Developments which utilise the District Licensing Scheme contribute proportionately to the conservation strategy, which funds the creation, management, and monitoring of local compensation sites.
16. The Council has a District License scheme for GCN and a Stage 1 District Licence Report has been entered into by the appellant.

¹ The Conservation of Habitats and Species Regulations 2017 (as amended)

² Ecological Assessment Report by Pure Ecology March 2024- updated August 2024.

17. The submitted report confirms that subject to the restrictions such as best practice working, use of reasonable avoidance measures, timings of works, and amphibian fencing and pitfall trapping to clear newts from the site prior to works, then the development proposal can be covered under the District Licence. This would ensure that the proposal would meet the favourable conservation status test and secure adequate compensation for any impact.
18. I am therefore satisfied that the proposal meets the relevant tests in the Regulations. It is noteworthy that the Council's Ecological Planning Advisor has no objection to the scheme, subject to conditions.
19. The Council also objects to the proposal on the basis that it has not been demonstrated that a net gain in biodiversity can be achieved. The Framework specifies that net gains for biodiversity should be secured but no qualifying amount is specified. Legal requirements relating to the provision of 10 percent biodiversity net gain do not apply to this proposal as the application was made before 2 April 2024. Appropriate landscaping could ensure that some benefit to biodiversity is secured at reserved matters stage. As such, there is no conflict with the Framework in this respect.
20. I conclude that the proposal would not have any harm on protected species. There is therefore no conflict with the protection of biodiversity, wildlife and habitats goals of JCS Policy SD9 and BP Policy NAT1.

Other Matters

21. The site is located within the Cotswold Beechwood Special Area of Conservation (SAC) Impact Risk Zone (IRZ). The Cotswold Beechwoods represent the most westerly extensive blocks of beech forests in the UK. It is designated as a Special Area of Conservation (SAC) for its woodland flora which includes rare plants and flowers. The conservation objectives for the SAC include ensuring that the extent and distribution of its qualifying habitats are maintained or restored.
22. The proposal for new dwellings has the potential to cause adverse effects, either alone or in combination with other developments, due to the increase of recreational pressure and the potential this has to impact upon the qualifying features for which the SAC was designated. Accordingly, I have carried out an Appropriate Assessment, as required under the Regulations.
23. The Cotswold Beechwood SAC Recreation Mitigation Strategy (2022) (SAC Mitigation Strategy), sets out measures to help mitigate against the potential effects from new housing. This mitigation is achieved through financial contributions towards the provision of Suitable Alternative Natural Green Space (SANG) within the Council's borough, which is aimed at providing an alternative recreation location to the SAC.
24. The submitted legal agreement secures a payment of £673 per dwelling towards SANG, in addition to an administration fee of £125, which reflects the SANG tariff set out in the SAC Mitigation Strategy. Natural England have set out that, subject to this mitigation being secured, they have no objection.
25. The proposed mitigation would meet the requirements of the SAC Mitigation Strategy. As the competent authority, I am therefore satisfied that with the proposed mitigation, the development would not have an adverse effect on the

integrity of the SAC. The development would therefore comply with the Conservation of Habitats and Species Regulations 2017 (as amended).

26. The submitted drainage strategy³ and comments from Severn Trent Water⁴ sets out that appropriate surface water drainage is achievable, and any objection to the foul connection is resolved. In the absence of substantive information to contradict this, in addition to conditions securing further appropriate details, I am satisfied that the development would not lead to unacceptable impact on drainage or risk of flooding. It is notable that the Council have come to the same conclusion.
27. Issues of design and visual appearance, in addition to landscaping would be considered at reserved matters stage. Similarly, whilst details of design are reserved for future consideration, I am satisfied that the submitted layout could be implemented without harming the living conditions of neighbouring dwellings in any way.
28. There is no substantive evidence before me to suggest that the development would lead to issues of pollution, and any noise and disturbance from a construction period would be temporary.
29. Given the distances to the nearest listed buildings and conservation areas the development would not have any detrimental effect on, or harm to the setting of any designated heritage asset.
30. There is no substantive evidence before me that the development would lead to conflict with any policies relating to highway safety, climate change or sustainability, or fire safety. It is noteworthy that the Council have concluded that there would be no harm in relation to these matters.

Conditions

31. The Council has provided a list of suggested conditions that it considers would be appropriate. I have considered these in light of the Planning Practice Guidance (PPG) and the test set out in the Framework. For clarity and to ensure compliance with the tests, I have amended some of the Council's suggested wording.
32. In addition to the standard time limit for the reserved matters submissions, I have imposed a condition requiring the development to be carried out in accordance with the approved plans as this provides certainty.
33. Conditions relating to ecology are required in order to ensure that adverse impacts on GNC are adequately mitigated and that site works are delivered in full compliance with the organisational licence. These conditions are required to be pre-commencement in order to ensure the effectiveness of the mitigation.
34. Given that the appeal site is adjacent to neighbouring residential properties, a construction method statement is necessary in order to preserve highway safety, local amenity and the living conditions of nearby residents during any construction period. This is also required to be pre-commencement in order to ensure the construction process is managed appropriately. A separate conditions specifying construction hours is also necessary for the same reason.

³ By K-Ten Consulting, 29 November 2023

⁴ Dated Jan 15 2025

35. A condition securing the mitigation measures and enhancements set out in the submitted ecological assessment (EA) is necessary. Given the results of the EA and the mitigation measures proposed, a separate condition relating to the submission of a Construction Ecological Management Plan is unnecessary.
36. Conditions securing the submission of appropriate cycle, bin storage and car parking details are necessary in order for future residents to have access to these facilities. This includes charging for electric vehicles in the interest of sustainability.
37. A condition relating to unexpected contamination is necessary in order to ensure that the site is appropriate for future occupiers.
38. Conditions relating to a groundwater monitoring programme, a surface water drainage scheme, a SuDS management and maintenance plan and drainage plans for the disposal of foul water are necessary in the interest of surface water/drainage features and flood risk management.
39. Conditions relating to landscaping and design, including materials, levels and boundary treatment, are not necessary as they relate to the reserved matters.

Conclusion

40. For the reasons given above, the appeal is allowed.

B Phillips

INSPECTOR

Schedule of conditions

1. Details of the appearance, landscaping and scale, ("the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
2. Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
3. The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.
4. The development hereby permitted shall be carried out in accordance with drawing no: Site Location Plan 01, Site Layout 02 revision B.
5. No development hereby permitted shall take place except in accordance with the terms and conditions of the Council's Organisational Licence (WML-OR138, or a 'Further Licence') and with the proposals detailed on plan "Greenacre, Ash Lane: Impact plan for great crested newt District Licensing (Version 1)", dated 13th February 2025.
6. No development hereby permitted shall take place unless and until a certificate from the Delivery Partner (as set out in the District Licence WML-OR138, or a 'Further Licence'), confirming that all necessary measures regarding great crested newt compensation have been appropriately dealt with, has been submitted to and approved by the planning authority and the authority has provided authorisation for the development to proceed under the district newt licence. The delivery partner certificate must be submitted to the local planning authority for approval prior to the commencement of the development hereby approved.
7. No development hereby permitted shall take place except in accordance with Part 1 of the Great Crested Newt Mitigation Principles, as set out in the District Licence (WML-OR138, or a 'Further Licence'), and in addition in compliance with the following:
 - Works which will affect likely newt hibernacula may only be undertaken during the active period for amphibians.
 - Capture methods must be used at suitable habitat features prior to the commencement of the development (i.e., hand/destructive/night searches), which may include the use of temporary amphibian fencing, to prevent newts moving onto a development site from adjacent suitable habitat, installed for the period of the development (and removed upon completion of the development).
 - Amphibian fencing and pitfall trapping must be undertaken at suitable habitats and features, prior to commencement of the development.
8. The development hereby permitted shall not be occupied until details of vehicle and cycle parking have been made available in accordance with details to be

submitted to and approved in writing by the local planning authority. Such details shall include a scheme for enabling charging of electric plugin and other ultra-low emission vehicles. The vehicle and cycle parking and charging points shall be maintained for this purpose thereafter

9. The development hereby permitted shall not be occupied until details of refuse and recycling storage facilities have been made available in accordance with details to be submitted to and approved in writing by the local planning authority. The waste and recycling facility shall be permanently retained and maintained thereafter.
10. No development shall take place until a Construction Management Plan has been submitted to and approved in writing by the local planning authority. The approved Construction Management Plan shall be adhered to throughout the construction period for the development.
11. During the construction phase (including demolition and preparatory groundworks), no machinery shall be operated, no process shall be carried out and no deliveries shall be taken at or dispatched from the site outside the following times: Monday-Friday 8.00 am-6.00pm, Saturday 8.00 am-1.00 pm nor at any time on Sundays, Bank or Public Holidays.
12. The development shall proceed in accordance with section 6 of the submitted Ecological Assessment report (Pure Ecology, August 2024).
13. If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved measures.
14. No development shall commence until the full results of a groundwater monitoring programme, undertaken over a minimum period of 5 months between the start of November and the end of May, has been submitted to, and approved in writing by, the local planning authority. The results should clearly indicate that the maximum groundwater peak level within the trial location has been achieved and has declined for two consecutive months. A minimum of two readings per month within the trial location should be undertaken.
15. No development shall commence until a surface water drainage scheme for the site based on sustainable drainage principles and including details of exceedance routes, has been submitted to and approved in writing by the local planning authority. The scheme shall subsequently be implemented in accordance with these approved details and retained for the life of the development.
16. No development shall be occupied until a SuDS management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime, has been submitted to and approved in writing by the local planning authority. The

approved SUDS maintenance plan shall be implemented in full in accordance with the agreed details.

17. No development shall commence until, drainage plans for the disposal of foul water shall be submitted to and approved in writing by the local planning authority. The submitted details will also ensure that no surface water is to be discharged into the public sewerage system.
None of the dwellings hereby approved shall be first occupied until the foul water drainage scheme has been fully implemented in accordance with the approved details.

End of Schedule