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## Appeal Decision

Hearing held on 19 & 20 May 2016

Site visit made on 20 May 2016

**by Richard McCoy BSc MSc DipTP MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 20 September 2016**

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**Appeal Ref: APP/G1630/W/15/3138954**

**Land to the east of Butts Lane, Woodmancote, Cheltenham GL52 9QH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Crest Nicholson (South West) Ltd against the decision of Tewkesbury Borough Council.
  - The application Ref 15/00764/FUL, dated 8 July 2015, was refused by notice dated 27 October 2015.
  - The development proposed is the erection of 37 no. 2, 3, 4 and 5 bedroom dwellings, open space, parking, associated works and new vehicular access from Butts Lane.
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### Procedural matters

1. A signed and dated S106 Planning Obligation was submitted by the appellant. This covers contributions towards education and libraries, playing pitch and changing facilities, a LEAP and community facilities. In addition, the Obligation would provide public open space and affordable housing units. I return to these matters below.
2. It was confirmed at the Hearing that in the light of the provisions within the Obligation, the Council is no longer pursuing its refusal reasons 5, 6 and 7 in respect of affordable housing, on or off-site sports facilities, and education and library infrastructure. Furthermore, it was confirmed that the Council is not pursuing its refusal reason 8 as no evidence was adduced by NHS England to substantiate its requested contribution towards medical facilities. I have dealt with the appeal on this basis.
3. It was agreed at the Hearing that as an emerging document undergoing examination, the *Joint Core Strategy, Gloucester, Cheltenham and Tewkesbury; Submission Version, November 2014* should be afforded very little weight. I have dealt with the appeal on this basis.
4. Although the application form refers to 37 no. dwellings, the parties confirmed that this was increased to 38 to achieve affordable housing provision closer to the required level of 35%. I have dealt with the appeal on this basis.

### Decision

5. I dismiss the appeal.
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## **Main Issues**

6. The effect of the proposal on:
  - 1) the Cotswolds Area of Outstanding Natural Beauty (AONB);
  - 2) the setting of the Grade II listed Brook Cottage;
  - 3) the character and appearance of the village;
  - 4) flood risk and drainage, and
  - 5) whether this would be a sustainable form of development having regard to national and development plan policies in respect of the delivery of new housing and whether or not the Council can demonstrate a deliverable 5 year supply of housing land.

## **Reasons**

### *Background*

7. The appeal site is a pasture field located on rising ground on the edge of the settlement of Woodmancote. It is bounded by residential development to the south, west and south-east, while to the north and north-east there is a single dwelling and open agricultural land. The centre of Woodmancote is a conservation area and the settlement is surrounded by a number of relevant designations including Green Belt, AONB and Special Landscape Area.
8. Proposed is the erection of 38 no. dwellings, of which 13 units would be affordable, with access taken from Butts Lane. The appeal site extends to around 2 hectares and the development density would be around 17 dwellings per hectare with around 0.63 hectares of open space provided. The proposed development would be accessible to public transport links, and the local services and facilities in Woodmancote and Bishop's Cleeve.

### *The effect on the AONB*

9. The appeal site is located within the Cotswolds AONB. An AONB is an area of high scenic quality that has statutory protection in order to conserve and enhance the natural beauty of its landscape. The National Planning Policy Framework (NPPF) makes clear that the planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes. Great weight should be given to conserving landscape and scenic beauty in AONBs, which have the highest status of protection in relation to landscape and scenic beauty.
10. Landscape character assessments for the area around the appeal site have been carried out at national, county and AONB level by Natural England; *National Character Area*, Gloucestershire County Council; *Gloucester Landscape Character Assessment, LDA Design, 2006*, and the Cotswolds AONB Conservation Board; *Cotswolds AONB Landscape Character Assessment, 2006*, respectively. In addition, Tewkesbury Borough Council has recently produced a district level landscape character assessment: *Landscape and Visual Sensitivity Study - Rural Service Centres and Service Villages, 2014 (LVSS)*.
11. The LVSS places the proposal within Landscape Assessment Parcel 'Wood 03'; National Landscape Character Area 106 - 'Severn and Avon Vales', and

Cotswolds AONB Landscape Character Area 2E: 'Winchcombe to Dovers Hill – (Escarpment)'. The "Escarpment" landscape is characterised as a narrow landscape type, forming a dramatic, prominent and well known landscape feature as part of the distinctive topography of the area. A key characteristic is "small scale settlement generally confined to lower shallower slopes of the escarpment, in sheltered locations and adjacent to spring lines".

12. I observed that the proposal would be located where the village transitions from urban to semi-rural in character and appearance. This is apparent from Butts and Bushcombe Lanes which have the character of narrow country lanes in the vicinity of the appeal site. They have a tranquil quality with Butts Lane forming a distinctive boundary to the settlement. Beyond this point lies the rising, open land of the AONB. The scarp slope, which includes the appeal site, rises sharply from the edge of the settlement and provides the AONB with a distinctive, attractive setting. As a result, the landscape sensitivity of the area is high.
13. The appellant submitted a Landscape and Visual Impact Assessment (LVIA) which includes 26 representative views of the proposal and a Zone of Theoretical Visibility. The LVIA concludes that the proposal would result in moderate adverse landscape effects on the AONB and local landscape character, but at a localised level only, and moderate to slight adverse effects on the visual amenity of some of the local rights of way. This conclusion takes account of proposed mitigation measures such as additional areas of boundary planting, use of locally appropriate building materials and reinstatement of field boundaries which could be secured through planning conditions attached to any grant of planning permission.
14. However, as an area of rising open land leading up the scarp, I observed the appeal site to share its affinity with the wider AONB. In common with similar areas within the AONB, it provides a buffer between the settlements on the lower ground and the rising land of the Cotswold Scarp. In which case, the proposal would be an incursion of development into an area that forms a clear boundary between the settlement on the one hand and the rising, open land of the AONB on the other. While there is wayside development to be found along the lanes that climb the escarpment slopes, these do not form concentrated areas of development and convey a sense of having grown organically, in character with the landscape. By contrast, the proposed development would be a more intensive use of the land and thus have an incongruous, urbanising impact on this part of the AONB.
15. Although the proposal would be largely screened in views from the west by intervening development, I nevertheless consider that it would appear prominently in elevated views from within the AONB, particularly the footpaths on Cleeve Hill which include a section of the Gloucestershire Way. Moreover, in localised views from Butts Lane and Bushcombe Lane, the proposal would be a very prominent feature. It would introduce development into an open field which is characteristic of the lower slopes of the Cotswolds AONB Scarp, extending beyond the settlement into the attractive, tranquil landscape of the AONB.
16. NPPF paragraph 116 advises that planning permission should be refused for major developments in AONBs except in exceptional circumstances and where it can be demonstrated they are in the public interest. No definition is given as

to what constitutes major development in this context making it a matter of judgement. In this regard, my attention was drawn to recent appeal decisions at Chipping Norton, Oxfordshire (APP/D3125/A/14/2213853) and Mawnan Smith, Cornwall (APP/D0840/A/14/2223116) wherein 60 and 42 dwellings respectively were considered to be "major development". However, given the site specific circumstances of the case before me in terms of the character of the area, the overall context and the scale of the proposal, these decisions are not be directly comparable. Taking the AONB as a whole, I consider that 38 dwellings within this edge of settlement location would not be a major development.

17. Nevertheless, giving great weight to the conservation of the landscape and scenic beauty of the AONB, I conclude that by extending the built form of the village, the proposal would diminish and encroach on the pleasant and distinctly rural views when seen from the roads and public footpaths in the general vicinity. Accordingly, it would have a detrimental effect on the character and appearance of the AONB, conflicting with the purpose of conserving and enhancing the natural beauty of the AONB. While no saved Policy of the adopted Tewkesbury Borough Local Plan to 2011(LP) was drawn to my attention in this regard, the proposal would conflict with NPPF paragraph 115.

*The setting of the Grade II listed Brook Cottage*

18. The NPPF defines the setting of a heritage asset as the surroundings in which it is experienced. The extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset; may affect the ability to appreciate that significance; or, may be neutral. The NPPF makes clear that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight attaches to the asset's conservation; the more important the asset, the greater that weight should be. Significance can be harmed through development within an asset's setting.
19. Historic England guidance; *The Setting of Heritage Assets*, indicates that setting embraces all of the surroundings from which an asset can be experienced or that can be experienced from or within the asset. Setting does not have a fixed boundary and cannot be defined, in perpetuity, as a spatially bounded area or as lying within a set distance of a heritage asset.
20. The significance of a heritage asset is defined in the NPPF as its value to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting. Significance may be harmed by a development and it is necessary to determine the degree of harm that may be caused.
21. I agree with the parties that the heritage asset that would be affected by this proposal as a development within its setting would be the Grade II listed Brook Cottage. The parties have described the significance of this heritage asset, including the contribution made by its setting and have also assessed the effect on significance that would arise as a result of the impact on setting. This approach is in line with the advice in NPPF paragraphs 128-9.

22. The fabric of the heritage asset would remain untouched by the proposal. From what I observed that is where the majority of its significance as a designated heritage asset lies. However, the setting of Brook Cottage does, to some degree, contribute to its significance. While I note the argument that recent additions to the listed building to its side and rear have affected its significance, and modern developments have taken place to the south (including a recently constructed dwelling directly opposite), it remains a designated heritage asset that is freestanding with its rear elevation facing the appeal site. I observed that the approach to Brook Cottage from Aesops Orchard, and views along Bushcombe Lane, take in the listed building and the appeal site, with the appeal site seen as rising land providing a green backdrop.
23. This setting gives the listed building a rural context as a wayside dwelling and contributes to its significance. The proposed set back of the development from the listed building to provide a buffer and the boundary planting, would to some degree, mitigate its effect on the setting of the listed building. However, the introduction of a housing development of the scale proposed, within this context, would have a harmful impact on the significance of this heritage asset as a development within its setting.
24. With regard to the degree of harm, the Planning Practice Guidance (PPG) sets out that "substantial harm" is a high test and goes on to note that in terms of assessing proposals affecting listed buildings, the key question is whether the adverse impact seriously affects a key element of their special architectural and historic interest. In this case, the significance of the listed building encompasses its historic, evidential and aesthetic values, the majority of which derives from its historic fabric which would be unaffected by the proposal. Consequently, I consider that the harm arising to the significance of the heritage asset, would be less than substantial.
25. In which case, although no saved LP Policy was drawn to my attention in this regard, under NPPF paragraph 134 this harm should be weighed against any public benefits of the proposal, including securing the asset's optimum viable use. This is a matter to which I return below.

*The effect on the character and appearance of the village*

26. As set out above, I consider that the proposal would have an urbanising effect on this transitional edge of the village and dilute the distinction between the settlement to the west and the open slopes to the east. Butts Lane presently provides a visual divide between the built form of the village and the open countryside beyond. An incursion of development beyond this would have a harmful effect not only on the AONB but on the character and appearance of the village.
27. While I consider that the proposed use of natural stone; orientating the dwellings to present an active frontage towards the countryside; proposed open spaces within the site; retention of the Butts Lane hedgerow, and the articulation of the rear elevations onto Butts Lane would mitigate the effect of the proposal to some extent, I nevertheless consider that the proposed density at around 26 dph across the developable area, and the incursion beyond the village edge would result in a harmful change to the character and appearance of the village, in conflict with saved LP Policy GNL2 and Section 7 of the NPPF.

*Flood risk and drainage*

28. The appellant submitted a *Flood Defence & Flood Alleviation Land Drainage Design Statement* (May 2016) prepared by the Phoenix Design Partnership Ltd. This document sets out a response to the concerns raised by Gloucestershire County Council as Lead Local Flood Authority (LLFA). In a letter to Tewkesbury Borough Council, dated 17 May 2016, the LLFA confirmed that in terms of surface water discharge and escarpment surface water, subject to conditions that could be attached to any grant of planning permission, the proposal could accommodate a viable drainage scheme for surface water and ensure flood risk is not increased elsewhere. From my assessment, I have no reason to disagree and consider that the proposal would not conflict with saved LP Policy EVT5 and EVT9, and NPPF Section 10.

*Housing land supply and sustainable development*

29. It is common ground that the Council cannot demonstrate a 5 year supply of housing land for the purposes of NPPF paragraph 47. A lack of a 5 year supply would engage NPPF paragraphs 49 and 14 as the relevant policies of the development plan cannot be considered to be up-to-date. However, in this case I have found that the proposal would fail to conserve the landscape and scenic beauty of the AONB and cause less than substantial harm to a heritage asset. In considering the relationship between the balancing exercises under NPPF paragraphs 14 and 134, a recent high court judgement (*Forest of Dean v SoS & Gladman* [2016] EWHC 421) makes it clear that for the purposes of the 2nd bullet point of paragraph 14 "decision-taking" (which addresses the circumstances where relevant policies of the development plan are out of date whether due to their lack of consistency with the NPPF and/or due to a failure to demonstrate a deliverable supply of housing land) paragraphs 115 and 134 may be specific policies which indicate that development should be restricted. The balancing exercise under paragraph 134 therefore requires to be carried out to determine if the harm is outweighed by any public benefits.

*NPPF paragraph 134 balance and paragraph 115*

30. The proposal would increase housing choice, including the provision of affordable housing, in a Borough which lacks a 5 year supply of deliverable housing land. The proposal would also deliver contributions towards the provision of sports facilities, a LEAP, open space, education, library and medical facilities as well as a commuted sum for community buildings. The appellant also claimed that the construction of housing brings with it economic benefits in terms of job creation (direct and indirect), additional spending power and payment of the New Homes Bonus and Council Tax.

31. The appellant also referred to NPPF paragraph 55 which notes that development in one village would support services in a nearby village as would be the case for Bishop's Cleeve and pointed out that landscape and ecological enhancements would flow from the proposal. However, in my judgement, employment and economic activity during the construction phase would be temporary benefits, and in general the benefits would not be enjoyed by the wider public but by those resident at the development and the businesses patronised by those residents.

32. Furthermore, the commuted sums for off-site sports facilities, LEAP and open space provision, along with education and medical contributions would benefit a

- relatively small proportion of the local population rather than the wider public. Nevertheless, it is the case that the NPPF seeks to boost significantly the supply of housing and widen the choice of high quality homes, as well as secure economic growth. Against this background, I attach significant weight to these benefits.
33. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) states that special regard should be paid to the desirability of preserving the settings of listed buildings, where those settings would be affected by proposed development. Applying section 66(1) of the Act in the manner required by the recent judgements that were drawn to my attention, is a matter to which I give considerable importance and weight.
34. Consequently, despite finding the harm to be less than substantial, the presumption against granting planning permission remains strong. It can be outweighed by material considerations if powerful enough to do so and while I give significant weight to the public benefits identified in this instance, I do not consider them to be sufficiently powerful to outweigh the less than substantial harm that I have identified. Accordingly, the proposal would conflict with NPPF paragraph 134.
35. Having applied the balance under NPPF paragraph 134 in respect of the setting of the heritage asset, I have found that the public benefits would not outweigh the less than substantial harm arising. This means that under limb 2 of the 2nd bullet of NPPF paragraph 14 "decision-taking", NPPF paragraph 134 is a specific policy in the Framework that indicates that development should be restricted. I have also concluded that the proposal would fail to conserve the landscape and scenic beauty of the AONB under NPPF 115 which is a further policy that indicates that development should be restricted. Therefore, whether or not a 5 year housing land supply can be demonstrated is not determinative in this appeal.

*Other matters*

36. Concerns were raised in respect of highway safety. Part of the proposal includes a new priority junction to serve the development from Butts Lane with the existing Bushcombe Lane junction being upgraded. In addition, a new footway would be provided along Butts Lane and Bushcombe Lane to connect to the existing pedestrian route along Bushcombe Lane to the recently developed residential estate.
37. Against this background, I note that in its consultation reply the highway authority was satisfied (subject to conditions that could be attached to any grant of planning permission) that the proposal could be accommodated within the local road network without compromising safety. From my assessment, I have no reason to disagree and consider that the proposal would not conflict with saved LP Policy TPT1.
38. The site is not subject to any national or local ecological or biodiversity designations. It is common ground that subject to conditions that could be attached to any grant of planning permission, the proposal would not adversely affect biodiversity. From my assessment, I have no reason to disagree.

39. From the evidence, I am satisfied that the proposal would not harmfully change the living conditions of existing occupiers of nearby dwellings and would provide satisfactory living conditions for future occupiers of the development.
40. My attention was drawn to several previous appeal decisions claimed to be similar. However, I am not aware of the detailed considerations taken into account by those Inspectors. Furthermore, given the site specific circumstances in this instance, taking this appeal on its planning merits, I do not consider the cited appeal decisions to be directly comparable.

### **Conclusion**

41. I have identified that the proposal would fail to conserve the landscape and scenic beauty of the AONB, would be harmful to the character and appearance of the village, and would cause less than substantial harm to a designated historic asset. Against this, the proposal would not be harmful in terms of flood risk/drainage and those matters set out above under *other matters*, and would bring benefits of significant weight as set out in the submitted Planning Obligation.
42. However, notwithstanding both the appellant's argument that Woodmancote is entirely constrained by the AONB, Green Belt and Special Landscape Area, and therefore development will need to take place in these locations to achieve the aims of the spatial strategy; and the representations in support of the proposal, I consider that these matters would not be sufficient to outweigh the harm, giving great weight to conserving the landscape and scenic beauty of the AONB and considerable weight to paying special regard to the desirability of preserving the setting of the listed building, as reflected in paragraphs 115 and 132 respectively of the NPPF.
43. Therefore for the reasons set out above, I conclude that the appeal should be dismissed.

*Richard McCoy*

INSPECTOR



## APPEARANCES

### FOR THE APPELLANT:

Mr C Boyle QC	Instructed by Pegasus Group
Mr D Weaver BA(Hons), MA, MRTPI	Executive Director, Pegasus Group
Mr P Gibbs BA(Hons), DipLA, CMLI	Director, David Jarvis Associates Ltd
Mr S Hindes BSc(Hons), MA, MRTPI	Associate Urban Designer, Pegasus Group
Ms G Stoten BA(Hons), MCIFA, FSA	Heritage Director, Pegasus Group
Mr P Amies BSc(Hons)	Drainage Consultant
Ms M Berrington BA(Hons), MSc, CMILT, MIHT	Highways Consultant

### FOR THE LOCAL PLANNING AUTHORITY:

Mr T Graham, Barrister	Instructed by the Council Solicitor
Mr M Tyas BA(Hons), MSc, MRTPI	Senior Planning Officer
Mr T Jones BA(Hons), CMLI	Landscape Consultant
Ms A Goodall BSc, MA	Urban Design Officer
Mr C Partrick BA(Hons), DipHM, IHBC	Conservation Officer
Mr D Parish	Gloucestershire County Council

### INTERESTED PERSONS:

Ms D Wells DipTP, MRTPI	Red Kite Development Consultancy on behalf of Woodmancote Residents' Action Group and Woodmancote Parish Council
Mr P Hale	Local resident
Mr D Crofts MRTPI	Director, Estcourt Planning (CPRE Gloucester Branch)
Mr S Palmer	Local resident
Mr L Silverthorne	Local resident
Mr D Bayne	Secretary, Gloucester Branch CPRE
Ms J Rea	Woodmancote Parish Council
Mr E Reilly	Local resident
Mr K Moylan	Local resident
Mr P Baker	Local resident
Mr D Chambers	Local resident
Mr R Large	Local resident
Mr S Griffin	Local resident
Mr E Burger	Local resident
Ms M Wintle	Local resident
Mr S Firkins	Planning consultant on behalf of a local resident

## **DOCUMENTS**

- 1 Appellant's list of appearances
- 2 Lead Local Flood Authority Recommendation
- 3 List of suggested conditions
- 4 CIL Compliance Statement
- 5 Suffolk Coastal District Council & Hopkins Homes Ltd & Sec of State for Communities & Local Govt; Richborough Estates Partnership LLP & Cheshire East Borough Council & Sec of State for Communities & Local Govt, Court of Appeal, C1/2015 0583 & C1/2015/0894 [2016] EWCA Civ 168

## **PLANS**

- 1 Map of Public Rights of Way
- 2 Plan of County Council's land interest
- 3 Map of site visit itinerary

## **PHOTOGRAPHS**

- 1 Photographs of area around appeal site

## **Documents submitted after the Hearing Closed**

- 1 Update on the progress of the Joint Core Strategy

Richborough Estates