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## Appeal Decision

Site visit made on 18 September 2017

**by Rachel Walmsley BSc MSc MA MRTPI**

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

**Decision date: 16 October 2017**

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**Appeal Ref: APP/G1630/W/17/3176932**

**Land at Twigworth Court, Tewkesbury Road, Twigworth, Gloucester  
GL2 9PG**

- 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 Res Land & New Homes Ltd against the decision of Tewkesbury Borough Council.
  - The application Ref 17/00339/FUL, dated 31 March 2017, was refused by notice dated 17 May 2017.
  - The development proposed is new dwelling within grounds of garden serving previously approved development.
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### Decision

1. The appeal is dismissed.

### Procedural matter

2. Submitted with the appeal is Site Plan 01 PL2. The material difference between this and the site plan submitted with the planning application is the retention of fruit trees. To accept Site Plan 01 PL2, therefore, would not prejudice the interests of interested parties and as a result I have considered it in reaching my decision on the appeal.

### Main Issues

3. These are:
  - (i) whether the proposal would be in a suitable location having regard to local and national planning policy for the delivery of housing;
  - (ii) the effect of the proposal on local landscape character;
  - (iii) the effect of the proposal on the living conditions of existing occupiers and whether the proposed development would provide acceptable living conditions for future occupiers, with particular regards to privacy;
  - (iv) the effect of the proposal on the setting of the listed building nearby; and,
  - (v) whether the proposal would made adequate provision for affordable housing.

## Reasons

4. The appeal site is situated outside a settlement boundary as defined in the Tewkesbury Borough Local Plan<sup>1</sup> (the Local Plan) and is, for the purposes of adopted planning policy, in the open countryside. Saved policy HOU4 of the Local Plan states that where new residential development is not within an existing settlement, it will only be permitted where "*such dwellings are essential to the efficient operation of agriculture or forestry, involve the acceptable conversion of an existing building, or the provision of affordable housing ...*". The development would not meet any of these exceptions and therefore the appeal proposal conflicts with the requirements of the adopted development plan.
5. It is suggested within the evidence before me, as well as within recent appeal decisions, that because policy HOU4 is based on the now revoked Structure Plan, it is out-of-date in the context of the Framework insofar as it relates to restricting the supply of housing. However, whilst policy HOU4 may be based on an out-dated source of housing supply figures, it remains compliant with the Framework in that it seeks to avoid sporadic development in the countryside and, in combination with policy HOU3, to ensure that new development is directed to the most appropriate locations. Furthermore, given my findings below in relation to the supply of housing land in the Borough, the presence of settlement boundaries does not appear to be constraining housing delivery. As such, I consider that HOU4 attracts full weight.
6. I have noted the intention within the Council's forthcoming Joint Core Strategy (JCS) to identify Twigworth as a settlement suitable for a large number of dwellings; in a similar manner to former approvals for development close to the appeal site. Nonetheless, the JCS examination has yet to be concluded and little weight can be afforded to the document at present.
7. The Framework takes some account of the transport shortcomings of rural areas. In this context, the appeal site is within a reasonable walking and cycling distance of a small range of services and facilities including a post office and a general store, and via a well-lit pavement. There is also a bus stop within an accessible distance of the appeal site which would connect future residents with a wider range of services and facilities in locations such as Gloucester City.
8. Even so, the focus of the Framework is on *maximising* the use of sustainable transport solutions and directing development to locations where the *fullest* possible use of public transport, walking and cycling can be made. It remains desirable, therefore, for new residential development to be located in appropriately served settlements, in line with the adopted development plan, rather than in the open countryside. This is particularly so given, rather than in spite of, the rurality of this area and the more restricted opportunities to exploit non-car based modes of transport.
9. The development could help maintain the vitality of a rural community, as promoted in paragraph 55 of the Framework. Any such contribution from a

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<sup>1</sup> Tewkesbury Borough Local Plan to 2011 (Adopted March 2006)

single dwelling would, however, be limited and there is no evidence before me to suggest that Twigworth lacks vitality or viability as a settlement.

10. Thus, the location of the appeal site would conflict with the development strategy of the adopted development plan, as noted above.

#### *Local landscape character*

11. Saved policies LND4 and LND7 of the Local Plan seek to protect the character and appearance of the rural landscape and where appropriate, require the provision of a high quality landscaping scheme in support of the development. These policies are in accordance with the Framework, which at paragraph 17 seeks to recognise the intrinsic character and beauty of the countryside when considering new development and therefore I afford them full weight.
12. The appeal site is within a semi-rural landscape, surrounded by a mix of built development and open fields. A line of hedging and tree planting along the site's southern boundary separates the area of built form from the open countryside. The poplar trees on this boundary are a notable feature of the landscape and, together with the fruit trees on site, contribute to the area's verdant character.
13. The site falls within the *Settled Unwooded Vale, SV6B 'Vale of Gloucester' Character Area*. Few of the published characteristics of this character area are evidenced in or around the appeal site.
14. The Landscape Strategy Plan<sup>2</sup> before me seeks to maintain planting on the southern boundary of the site and retain the hedgerow and poplar trees. Should the appeal be allowed it would be reasonable to secure this strategy plan by condition. In addition, the proposed dwelling would be within the envelope of built development. The line of separation between the built form and the open countryside would therefore be maintained and encroachment into the open fields avoided.
15. The site is subject to an interim Tree Preservation Order (TPO). Being unconfirmed and in the absence of any details to explain why the Council considers the trees worthy of protection, the interim TPO carries limited weight. The Tree Impact Assessment and Tree Protection Method Statement and Site Plan 01 PL2<sup>3</sup> before me proposes the retention of seven of the nine fruit trees on the site. Together with the retention of soft landscaping and trees along the southern boundary of the site, the verdant and semi-rural character of the area would be retained.
16. The Council suggests that the appeal site provides an important green space in the setting of the newly built development and the wider landscape. The site forms the garden to plot 4. As well as being mostly obscured by boundary planting, it contributes little to the wider landscape and therefore does not constitute a space of considerable landscape value. I recognise that developing it would make a change to the landscape given the existing absence of built form, however, it would not result in the loss of an open space that is intrinsic to local landscape character.

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<sup>2</sup> Landscape Strategy Plan 17015.101

<sup>3</sup> Plot 5, Site Plan As Proposed, Project No ARC.1315, Drawing No: 01 PL2

17. Without the proposed dwelling on the site it is conceivable that domestic paraphernalia would occupy the site, being the garden to the new dwelling of plot 4. Any concerns the Council has, therefore, for the harm that such accoutrements would have on the landscape as a result of the development proposed would be no different to the current situation. Furthermore, the boundary planting and tree retention would screen garden objects from local views. In all, therefore, garden paraphernalia would not detract from the character of the landscape.
18. The Council considers the orchard to be an important part of the landscape setting to Twigworth Court. Whilst the appeal site has at one time been an orchard related to Twigworth Court, it is now physically disconnected by boundary treatments. Within views from the open fields, the orchard can be seen within the foreground of Twigworth Court however, given the distance of the two and their physical separation, the site is of limited value as part of the landscape setting to this building.
19. In conclusion, the development, with the proposed landscape Strategy Plan, would not have a harmful effect on local landscape character and as a result would not be contrary to policies LND4 and LND7 of the Local Plan, or to the Framework, the aims of which have been noted above.

#### *Living conditions*

20. Saved policy HOU5 requires new development to provide a good standard of amenity for existing and future occupants of buildings, in accordance with paragraph 17 of the Framework. This policy, therefore, attracts full weight.
21. The garden to Twigworth Court begins at the farmhouse and extends south to a boundary contiguous with the appeal site. The garden is compartmentalised; the area nearest to the house is most conducive to the conventional garden activities such as sitting out, beyond this a kitchen garden and an area of fruit trees. The appeal site adjoins the area of fruit trees.
22. The Council's concern for privacy concerned potential overlooking from Twigworth Court to the rear garden of the new dwelling and its internal living spaces. Twigworth Court would be at an oblique angle to, and a sufficient distance from the appeal site, for views from the property to not invade the privacy of future occupiers when in their garden or property.
23. The new development would directly overlook the area of fruit trees to Twigworth Court. This area is a small proportion of the garden overall, furthest from the farmhouse and occupied by trees. Altogether, therefore, any overlooking would not have a discernible adverse effect on the living conditions of existing occupiers.
24. The Council suggests that there could be pressure in the future from prospective occupiers wanting to remove the laurel hedge because of its impact on their amenity space. In the absence of further details I can only surmise that the concern relates to overshadowing. Given the distance of the hedge to the new dwelling and its limited proportions in relation to garden size, any overshadowing caused by the hedge would not be detrimental to the occupier's enjoyment of their garden or internal living spaces.

Notwithstanding this, the hedge is outside the appeal site and therefore a condition controlling it would not be directly related to the development and is unlikely to be enforceable.

25. Similarly, the oblique angle of the proposed garden and that of plot 4, together with the landscaping proposed on the shared boundary would mitigate any harm to living conditions that could result from overlooking between occupiers.
26. In conclusion, the development would not have a discernible effect on the living conditions of existing occupiers and would provide acceptable living conditions for future occupiers, with particular regard to privacy. As such the proposal would not be contrary to policy HOU5 of the Local Plan nor paragraph 17 of the Framework, the requirements of which are noted above.

#### *Listed building*

27. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 is clear that special regard should be had to the desirability of preserving the setting of a listed building.
28. Twigworth Court is listed for its historical and architectural merits. The building was once set within larger grounds, which included an orchard, but over time these grounds have been built upon. Any significance that Twigworth Court derives from its setting is now confined to its own grounds, that of a large garden which is divided in two by a brick wall and extends south and east of the listed building. These gardens reinforce the principal elevations of the listed building, identified by their rendering.
29. The appeal site is physically separated from these gardens and is some distance from Twigworth Court itself. Consequently it makes little contribution to the setting of the listed building. The proposed dwelling would appear within the same view of the listed building, not least from the open fields and nearby road. However, the development's distance from Twigworth Court and its modest scale would leave the historical and visual significance of the listed building unharmed. Indeed the development would be within an area which the Council identified as being a visual buffer to the listed building.
30. In considering the proposal and the setting of the listed buildings and in accordance with the clear expectations of the Planning (Listed Building & Conservation Areas) Act 1990 therefore, I find that the development would leave the setting of the listed building unharmed, that is to say preserved. As a result the development would comply with paragraph 132 of the Framework which anticipates that great weight be afforded to the conservation of designated heritage assets, including their setting.

#### *Affordable housing*

31. Policy HOU13 of the Local Plan seeks the provision of affordable housing. This is in accordance with paragraph 54 of the Framework which encourages affordable housing within rural areas. I therefore give full weight to this policy.

32. I have before me a legal agreement that is dated and signed by the land owner and the local planning authority and provides for a suitable financial contribution towards affordable housing. I am satisfied that the legal agreement meets the necessary legal and policy tests set out in paragraph 204 of the Framework and Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended). Therefore, I can reasonably take the legal agreement into account in reaching my decision.
33. It is on this basis that I find that the proposal would make an appropriate provision for affordable housing in accordance with policy HOU13 of the Local Plan.

### **Other considerations**

34. Traditional orchards are a priority habitat according to the UK BAP list of priority species. However, 'traditional orchards' is not an all-inclusive term for any site with fruit trees on it. The Council does not substantiate its claims for the orchard being a priority habitat and in the absence of such details I cannot verify if the orchard would fall under the UK BAP definition of a traditional orchard. The allegation that the site is a priority habitat therefore carries little weight in the overall planning balance.
35. The appellant disagrees with the Council's assertion that it can demonstrate a five year housing land supply. Whilst recognising the appellant's argument that the JCS has not been adopted and therefore the five year supply is a speculative one, no substantive or specific evidence has been provided in support of this position. There is no reason, therefore, for me to assume that a five year supply is absent, nor, in light of this or the reasons given above, that limited weight should be afforded to the policies stated.
36. The development would contribute to local housing supply and create local jobs. However, as the proposal is for one dwelling, these benefits would be limited.
37. It may be that the proposal takes account of the local landscape character and heritage assets. These factors, however, would be expected of any development and I do not consider a lack of harm in this regard to equate to a benefit.

### **Conclusion**

38. I conclude that the appeal proposal would be contrary to the development plan when taken as a whole. There is no weight of material considerations before me sufficient to outweigh this conflict. Having had regard to all other matters raised, I find that the proposal would not be sustainable development and as a result the appeal is dismissed.

*R Walmsley*

INSPECTOR