



## Appeal Decision

Inquiry held on 12, 13, 14 and 15 December 2017

Site visit made on 14 December 2017

**by Jameson Bridgwater PGDipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 31 January 2018**

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**Appeal Ref: APP/C1625/W/17/3175953**

**Land at Holywell Farm and 89 Court Orchard, Wotton-under-Edge**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
  - The appeal is made by Oxford Law Ltd against the decision of Stroud District Council.
  - The application Ref S.16/1587/OUT, dated 26 October 2015, was refused by notice dated 20 December 2016.
  - The development proposed is described as 'Residential development, including demolition of 89 Court Orchard'.
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### Decision

1. The appeal is dismissed.

### Preliminary matters

2. The Inquiry sat for 4 days. I held an accompanied site visit on 14 December 2017.
  3. The planning application to which the appeal relates was submitted in outline form with all matters reserved. Indicative layouts were submitted with the planning application, these plans were for illustrative purposes only.
  4. A planning obligation for the provision of on-site affordable housing was submitted during the Inquiry under section 106 of the Town and Country Planning Act 1990. I deal with the contents of this below.
  5. A Statement of Common Ground (SOCG) was submitted which sets out the policy context along with matters of agreement and those in dispute. Specifically, it confirms that the Council is able to demonstrate a 6.75-year land supply of deliverable housing sites, as required by the Framework. Therefore, under these circumstances, the decision-taking criterion contained in paragraph 14 of the Framework is not engaged. Furthermore, Appendix 1 of the SOCG sets out the findings of additional archaeology surveys. The submitted report addresses the impact of the proposals on potential archaeology deposits and the appellant and the Council agree that this overcomes refusal reason No. 4. Consequently, after examining the submitted report, there is nothing in the evidence before me that goes against or contradicts the conclusions of the parties with regard to this specific matter.
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## **Main issues**

6. The main issues in the appeal are:

- the effect of the proposal on the character and appearance of the area, with particular regard to the Cotswolds Area of Outstanding Natural Beauty (AONB); and
- the effect of the proposal on the ecology and biodiversity of the area, with particular regard to protected species; and
- Whether there are any other material considerations which would justify the development being determined other than in accordance with the development plan.

## **Reasons**

7. The appeal site is located in the Coombe Valley within the Cotswolds AONB a nationally designated landscape. The appellant proposes a residential development of up to 25 units including 8 units of affordable housing on a field located on the valley side that is outside but adjoining the defined Settlement Development Limit of Wotton-Under-Edge. There are residential properties to the south-west on Court Orchard and Court Meadow. Holywell Farm and Dyers Brook are to the north-west of the site. There are paddocks to the north up the Coombe Valley, with playing fields and a small group of dwellings to the east.

### *Planning policy*

8. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires decisions to be made in accordance with the development plan unless material considerations indicate otherwise. The Stroud District Local Plan (SDLP) adopted in November 2015 is the development plan for the appeal site and the surrounding area.
9. Core Policy CP1 confirms that the SDLP adopts the presumption in favour of sustainable development consistent with the National Planning Policy Framework (the Framework). Core Policy CP2 sets out the settlement strategy for the area and Core Policy CP3 sets out the settlement hierarchy for the District. Core Policy CP4 seeks amongst other things to ensure that development maintains and enhances the quality of the built environment. Core Policy CP8 seeks amongst other things to ensure that housing development is well designed and sensitive to biodiversity. Core Policy CP15 seeks to restrict development outside of identified settlement development limits, except in circumstances where it can be demonstrated that a proposal meets the policy's specific rural/countryside criteria.
10. SDLP Delivery Policy ES6 seeks amongst other things to conserve and enhance the natural environment, including all sites of biodiversity value and all legally protected or priority habitats and species. Delivery Policy ES7 sets out that priority will be given to the conservation and enhancement of the natural and scenic beauty of the landscape whilst taking account of the biodiversity interest and the historic and cultural heritage within the Cotswolds AONB. The policy further states that 'Major development will not be permitted unless it is

demonstrated to be in the national interest and that there is a lack of alternative sustainable development sites'. Delivery Policy HC1 seeks amongst other things to ensure that new development is sympathetic to the form and character of settlements and to prevent uncontrolled expansion and potential coalescence.

11. The appeal site is located outside of the Settlement Development Limit of Wotton-under-Edge and therefore the proposed development would be in conflict with Core Policies CP1, CP2, CP4, CP15 and Delivery Policy HC1 of the SDLP.

*Character and appearance*

12. Paragraph 115 of the Framework states that "Great weight should be given to conserving landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty."
13. Located in the Coombe Valley within the Cotswolds AONB, the appeal site is a sloping open field wholly within a nationally designated landscape. National Character Area 107 Cotswolds is characterised by the "open and expansive scarp and high wold dipping gently to the south-east, dissected by river valleys". The appeal site exhibits the typical characteristics of the AONB Rolling Hills and Valleys landscape character type, where "concave valleys with steeper upper slopes often dominated by woodland contribute to the area's rural and secretive character".
14. The site and the surrounding area to the east are in rustic and pastoral use. To the south-east and north-east of the site the distinctive patchwork fields are enclosed by mature hedgerow boundaries that contribute to the established landscape character type. The settlement pattern is related to the valley form, with larger settlements in the valley mouth and smaller hamlets in the more secluded narrower upper valley.
15. The Cotswolds Way National Trail runs along the site's north-western boundary and a number of public footpaths lie to the south of the site within Wotton-under-Edge, with further public footpaths, bridleways and areas of land accessible under The Countryside and Rights of Way Act providing links to the wider landscape to the north and east.
16. The appellant in closing confirmed that they were in agreement with the Council's assessment of the visual baseline which stated "the proposed development site is relatively visually contained by the landscape of the area with the site's location within the secluded valley, enclosed by escarpments and the hill tops, limiting long range views"<sup>1</sup>. They further agreed with the Council's analysis that states "views are available principally from public footpaths and roads to the north and west and are often partially filtered by vegetation". This analysis is consistent with my observations from the accompanied site visit, where I observed the appeal site from a significant

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<sup>1</sup> Paragraph 3.3.4 - Mary O'Connor Proof of Evidence

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- number of agreed representative viewpoints within the Coombe Valley as identified by the parties and local residents.
17. The proposed development would materially change the character of the appeal site from an open rural character to that of a suburban built form. Furthermore, the introduction of the housing would materially change the outlook for local residents particularly from Court Meadow and Court Orchard by way of the introduction of built development; this would be likely to reduce inter-visibility across the site to Holywell and the Coombe Valley. This material change in character would also affect views to varying degrees from Coombe Road, Holywell and the Cotswolds Way National Trail. Overall the effect of the proposal would be to increase the presence of suburban type development in the countryside to the detriment of the rural character of the area.
  18. Whilst I have carefully considered the appellant's landscape representations I am not persuaded that the effects of the development would be wholly contained to the appeal site. This is because it is likely that the majority of the proposed development would be sited on the middle and upper parts of the field where it would be most visible, particularly from Holywell and Coombe Road. In reaching this conclusion I have taken account of the containment provided by existing features that would be supplemented by additional tree planting and the proposed use of open space buffers which seek to create the separation of the built development area from the Cotswold Way and the field to the east of the site. Furthermore, the harm I have identified would not be overcome by the appellant's proposed improvements to the settlement edge by way of increased tree planting.
  19. There was dispute between the parties in relation to the effect of the proposal in relation to coalescence between Wotton-under-Edge and Holywell. I accept that based on all of the evidence before me and my on-site observations that the development of housing on the site could be designed to ensure that there would not be physical coalescence. However, even taking the proposed landscape buffer into account, the gap between the two settlements would be significantly reduced meaning that visually, the separate identity of Holywell as a hamlet would be significantly undermined. Consequently, this would be likely to result in the permanent incremental erosion of the secluded valley settlement pattern, a key component of the character of the Cotswolds AONB.
  20. The appellant in support of their appeal has cited the findings of The White Report, a Landscape Sensitivity Assessment commissioned by the Council to inform their early ongoing review of the SDLP. The White Report assessed seven parcels of land around Wotton-under-Edge for their potential suitability for residential development. The parcel of land (Wo05) in which the appeal site is located was identified as being of High/Medium sensitivity in relation to housing development. As such, I accept that the appeal site is part of one of only three parcels of land out of the total number of seven identified that was found to be potentially acceptable on the basis that it is less sensitive than other sites around the settlement.

21. Subsequently, the Council reviewed and assessed those three sites (High/Medium) and rejected the other two identified in the assessment<sup>2</sup>. However, the review of the SDLP is at an early stage and the findings of the White Report are only a small component part of the overall plan review process. Ultimately, the suitability of the site for housing will need to be assessed further in the context of the wider plan review, where the site will almost certainly be tested against sites outside of the AONB. Therefore, at this stage it has not yet been demonstrated through the SDLP review that the appeal site or Wotton-under-Edge is an appropriate location for housing growth.
22. Having reached the conclusions above, the proposal would result in material harm to the character and appearance of the Cotswolds AONB by way of the introduction of suburban built form that is unsympathetic to the prevailing landscape character and the permanent incremental erosion of the secluded valley settlement pattern, a key component of the character of the Cotswolds AONB. The proposal would therefore fail to conserve the landscape and scenic beauty of the Cotswolds AONB and consequently conflict with Core Policy CP1 and Delivery Policy ES7 of the SDLP.

*Major Development in the AONB*

23. Paragraph 116 of the Framework states that permission should be refused for major developments in nationally designated landscapes including AONBs except in exceptional circumstances and where it can be demonstrated that they are in the public interest. Furthermore, the national Planning Practice Guidance (the Guidance) states: "Whether a proposed development in these designated areas should be treated as a major development, to which the policy in paragraph 116 of the Framework applies, will be a matter for the relevant decision taker, taking into account the proposal in question and the local context."<sup>3</sup>
24. The second sentence of paragraph 116 of the Framework states that consideration of major applications in designated landscapes should include an assessment of the need for the development; the cost of and scope for developing elsewhere outside the designated area; and any detrimental effect on the environment and the extent to which that could be moderated. However, these matters would only fall to be considered if the development is defined as major. They are not a definition of what constitutes major development.
25. There was a general consensus at the Inquiry that the local context was key when reaching a conclusion in relation to whether a proposal should be treated as a major development. I consider that 'context' as set out in the Guidance relates merely to the factual nature of the size and scale of development compared to that in its vicinity. It does not mean the effect of the

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<sup>2</sup> Peter Frampton Proof of Evidence Appendix 12

<sup>3</sup> Paragraph: 005 Reference ID: 8-005-20140306 – Revision Date 6 March 2014

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development on the AONB. This is consistent with the approach of the Inspector in the Ilfracombe appeal.<sup>4</sup>

26. Therefore, when comparing the proposed size and scale development (25 dwellings), against the overall size and scale of Wotton-under-Edge (2344 dwellings<sup>5</sup>) as a whole, the proposal would only represent a 0.01% increase in the size of the settlement. Consequently, I conclude that in this site-specific context the proposed scheme would not be major development.
27. Notwithstanding this, the Guidance also states, in the same paragraph as that quoted above: "The Framework is clear that great weight should be given to conserving landscape and scenic beauty in these designated areas irrespective of whether the policy in paragraph 116 is applicable."
28. The second sentence confirms the Framework's stance in seeking to conserve landscape and scenic beauty irrespective of whether the development is considered to be major. Having concluded above that the proposed development would fail to conserve the landscape and scenic beauty of the Cotswolds AONB, this identified harm is a significant element in the planning balance, which I deal with below.

#### *Protected species*

29. The Government's Planning Practice Guidance states that an ecological survey will be necessary in advance of a planning application, if the type and location of development are such that the impact on biodiversity may be significant and existing information is lacking or inadequate. It also advises that ecological surveys should only be required where clearly justified, for example if there is a reasonable likelihood of a protected species being present. In addition, Circular 06/2005 states that 'it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted'.
30. In support of their planning application the appellant submitted two ecological survey reports (Ecoline Report's dated May 2015 and October 2015). These reports set out the appellant's findings in relation to Badgers, Bats, Reptiles (Grass Snakes, Slowworms), Great Crested Newts (GCNs), and White-Clawed Crayfish on or around the appeal site. Based on their evidence, the appellant argued that it would be appropriate to use planning conditions to secure the necessary mitigation in relation to the protected species identified.
31. With regard to the site-specific protection for Bats and White-Clawed Crayfish, it was common ground between the parties that the necessary mitigation could be achieved by way of conditions. Therefore, after carefully considering both parties' submissions along with their representations at the Inquiry there is nothing in the evidence before me that goes against or contradicts the conclusions of the parties with regard to these protected species.

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<sup>4</sup> APP/X1118/W/15/3012049

<sup>5</sup> Para 4.11 PJ Frampton Proof of Evidence November 2017

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32. In relation to Badgers, the appellant's ecological survey reports confirm the presence of an outlier sett at the edge of the appeal site. The reports confirm that a Badger licence would be required to permit activities close to a badger sett that might result in disturbance. However, notwithstanding this the appellant's submitted reports do not provide an adequate level of detail in relation to the necessary mitigation measures that would be required to ensure the protection of Badgers and their habitat.
33. The appellant's submitted ecology reports provide a detailed assessment of the numbers and the locations of reptiles (Grass Snakes, Slowworms) on the appeal site. It further confirms that if the site is developed then it will be necessary for the identified reptiles to be removed from the site and relocated to a permanent refugia habitat. However, despite this, the reports fail to identify and secure the provision of a suitable receptor site with the necessary habitat that would ensure appropriate safeguarding of the protected reptiles identified.
34. With regard to the GCNs, the appellant's first ecological report dated May 2015 recommended that a survey of the pond in the garden of No 89 Court Orchard should be undertaken to ascertain if GCNs inhabit the pond; setting out the number and types of surveys that should be undertaken. Further stating that they could be carried out from the start of March to the end of June but should include a minimum of two visits from mid-April to mid-May. However, there is no substantive evidence contained within the second ecological report dated October 2015 to confirm that any of the recommended pond surveys were undertaken. The report merely states that neither of the two ponds near the appeal site have any prospect of supporting GCNs. At the Inquiry a letter (12 December 2017) from the owner of 89 Court Orchard was submitted stating that there are gold fish in their garden pond. Notwithstanding this, Natural England advice is that GCNs may still inhabit ponds even if fish are present. Therefore, based on all of the evidence before me it has not been adequately demonstrated that GCNs are not present in the ponds in or around the appeal site.
35. Therefore, given the degree of uncertainty in relation to mitigation, the use of conditions in relation to the protection of badgers, reptiles and GCN's would not be appropriate in this case. Moreover, the absence of this information means that it is not possible to be certain that the proposal would not result in significant harm to biodiversity as envisaged by Paragraph 118 of the National Planning Policy Framework (the Framework). For similar reasons the proposal would also fail to achieve one of the core planning principles set out in Paragraph 17 of the Framework, in which planning should contribute to conserving and enhancing the natural environment.
36. Having reached the conclusions above, the proposal would therefore conflict with policy ES6 of the SDLP which seeks to ensure amongst other things, that development would not result in adverse effects on habitats and species. In reaching this conclusion I have carefully considered the Secretary of State's remarks about making the process of dealing with Protected Species "less painful", however, in this specific circumstance they do not lead me to a different conclusion.

*The benefits of the scheme*

37. It was common ground between the parties that there was no current shortfall in housing supply in Stroud at the time of the Inquiry. However, the appellant has argued that despite being outside the defined Settlement Development Limit of Wotton-Under-Edge, the appeal site is located close to services/facilities and would provide housing to meet both national and local housing need.
38. The proposed 25 homes would make a very small contribution to the supply of housing at a national level and this would be a benefit derived from the proposal. With regard to affordable housing, the proposed 8 units would make a policy compliant contribution to meet the acute District wide shortage that is both acknowledged and addressed in the SDLP. However, no substantive evidence was produced by the appellant to demonstrate that Wotton-under-Edge has a specific local need or requirement for affordable housing over and above what is identified and addressed within the SDLP. Notwithstanding this, I afford some weight to the delivery of both market and affordable housing to meet both national and District requirements.
39. I have carefully considered the representations of the appellant in relation to the alleged unfairness in the distribution of housing across Stroud. However, the substantive evidence before me clearly demonstrates that the distribution and allocation of housing in the SDLP is reflective of the constraints that shape the District, in particular the Cotswolds AONB. Furthermore, whilst the appellant cited Stonehouse as an example of apparent unfairness, it is fundamentally different to Wotton-under-Edge as it is located outside the Cotswolds AONB. Moreover, the SDLP allows for proportionate growth within the Settlement Development Limit of Wotton-under-Edge. Consequently, there is nothing in the evidence that would lead me to the conclusion that the housing allocation strategy across the District as set out in the SDLP would result in 'some areas being treated better than others'.
40. There was no substantive evidence produced to demonstrate that development beyond that envisaged in the SDLP is required to sustain the vitality or viability of services or facilities within Wotton-under-Edge. Notwithstanding this, the development of an additional 25 homes in Wotton-under-Edge would be likely to increase economic activity in the settlement and as such this is a benefit, but in my view it can only be afforded minimal weight.

*Planning obligation*

41. At the time the appeal was made the appellant had not provided a planning obligation in relation to the provision of on-site affordable housing. However, the appellant submitted a planning obligation as part of the appeal process pursuant to Section 106 of the Act, which addresses this issue. The planning obligation does not appear to be in dispute. However, I have considered it against the tests in Regulation 122 of the CIL Regulations 2010 and the Framework nonetheless.
42. The obligation secures the delivery of 8 on-site affordable housing units. There is no dispute between the parties that there is an identified need for affordable housing in Stroud. The provision is consistent with the requirements of Core



Policy CP9 of the SDLP. I therefore conclude that the provision of on-site affordable housing is reasonably related in scale and kind to the needs generated by the proposed development. I therefore consider that the obligation meets the necessary tests in law and I have taken account of it in reaching my decision.

#### *Other considerations*

43. In support of their position the appellant has principally cited two appeal decisions, one by the Secretary of State in Lichfield and one by an Inspector in Cirencester<sup>6</sup>. However, after carefully considering both decisions I am of the view that they are materially different to the appeal before me in that neither of those appeal sites was located within an AONB. As such, I consider that their contexts differ to that of the scheme before me and therefore they do not lead me to a different conclusion in this case.
44. The appellant cited the 'Planning for the right homes in the right places' consultation, in particular the proposed standard method for calculating local authorities' housing need. It was argued that the proposed development could address Stroud's future housing needs. However, the findings from the consultation have not been published nor has the standard method for calculating local authorities' housing need been implemented. Therefore, this matter cannot be afforded any weight.
45. There was local concern raised in relation to the potential effect of the proposed development on traffic and car parking in Wotton-under-Edge. However, based on all of the evidence before me and the observations during my site visits, I am satisfied that an adequate level of car parking could be accommodated on the appeal site to service the development. Furthermore, the level of traffic that would be generated from the proposed development would be unlikely to materially increase congestion in Wotton-under-Edge and therefore would not result in severe harm to highway safety. Moreover, this conclusion is consistent with the comments of the Highways Authority who raised no objection in relation to parking provision or the effect of the proposal on highway safety.
46. A number of additional issues were raised by local residents, including the accessibility to public transport and the effect of the proposal on the capacity of local services. However, as I am dismissing the appeal for other reasons my decision does not turn on these matters.

#### **Planning Balance and Conclusion**

47. In conclusion, a number of benefits would flow from this development. The proposed 25 homes would make a limited contribution to the overall supply of housing nationally with a policy compliant contribution of 8 affordable units towards the provision of affordable housing in a District with an acknowledged acute need. Additionally, the proposal would be likely to result in a minimal increase to economic activity in Wotton-under-Edge.

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<sup>6</sup> APP/K3415/A/14/2224354 and APP/F1610/16/W/3151754

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48. In acknowledging these benefits, I do not consider that they would outweigh the harm identified to both the character and appearance of the Cotswolds AONB and biodiversity, nor do they provide an adequate justification for reducing the weight that should be given to Core Policies CP1, CP2, CP4, CP15 and Delivery Policy HC1 of the SDLP. To do so would allow residential development in the Cotswolds AONB without regard to the quantified need for it and would be in direct conflict with the core planning principle of the Framework that planning should genuinely be plan-led (paragraph 17). In reaching this conclusion I consider that it is wholly consistent with Secretary of State's speeches of 4 July 2017 and 16 November 2017 that seek amongst other things to boost the supply of housing within a plan led system.
49. For the above reasons, and having regard to all other matters raised I conclude that the appeal should be dismissed.

*Jameson Bridgwater*

INSPECTOR

#### **DOCUMENTS SUBMITTED AT THE INQUIRY**

1. Transcript of the opening statement of Mr Anthony Crean QC
2. Transcript of the opening statement of Miss Nadia Sharif of Counsel
3. Appeal Decision APP/F1610/16/W/3151754 - 13 June 2017
4. Extract from 'Planning for the right homes in the right places' consultation
5. Copy of a letter dated 12 December 2017 – Relating to Goldfish in garden pond
6. Extract from Government Circular ODPM 06/2005 Defra 01/2005
7. Transcript of the statement of Chris Young
8. Transcript of the statement of Helen Roberts
9. Transcript of the statement of Julia Fry
10. Transcript of Sajid Javid's speech on the housing market 16 November 2017
11. Extract from Stroud Core Strategy Topic Paper: Rural Settlement Classification February 2010
12. Extract from Stroud District Settlement Role and Function Study
13. Draft Planning Conditions – Agreed by parties
14. Draft Planning Obligation for the provision of Affordable Housing
15. Transcript of the closing statement of Miss Nadia Sharif of Counsel
16. Transcript of the closing statement of Mr Anthony Crean QC

**APPEARANCES**

FOR THE APPELLANT:

Mr Anthony Crean QC

Instructed by Mr Peter J Frampton

He Called

Peter J Frampton

Framptons

Paul Harris

MHP Design Ltd (Landscape)

FOR THE LOCAL PLANNING AUTHORITY:

Miss Nadia Sharif of Counsel

Instructed by Stroud District Council

She Called

Mark Russell

Stroud District Council (Land Supply)

Victoria Pettigrew

Stroud District Council (Ecology)

Mary O'Connor

WYG (Landscape)

John Longmuir

Stroud District Council (Planning)

INTERESTED PERSONS:

Chris Young

Wotton-under-Edge Town Council

Julia Fry

Holywell Farm Action Group

Catherine Braun

District Councillor (Wotton-under-Edge)

Helen Roberts

Local resident