



Appeal Decision

Hearing Held on 28 November 2017

Site visit made on 28 November 2017

by R C Kirby BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1st March 2018

Appeal Ref: APP/F1610/W/17/3177805 **Land off Berry Hill Crescent, Cirencester**

- 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 Piper Ventures Ltd against the decision of Cotswold District Council.
 - The application Ref 17/00180/FUL, dated 13 January 2017, was refused by notice dated 20 April 2017.
 - The development proposed is development of 21 new dwellings, including affordable housing (including demolition of an existing dwelling), a new access, landscaping and other associated works.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. During the course of the appeal a Section 106 Agreement dated 23 November 2017 was submitted which would make provision for education. A Unilateral Undertaking of the same date would make provision for 10 of the units on the site to be affordable. Following the Hearing a Unilateral Undertaking dated 15 December 2017 was submitted by the appellant, which would make provision for the same amount of affordable housing to that set out above and the provision of open space upon the site. The Council has indicated that the obligations contained within these documents address its second reason for refusal. It does not therefore wish to contest these matters.
3. The appellant has requested that I consider a drawing amending the design of plot 3 to make it a two bedroom, four person affordable dwelling and removing the dormer windows. The Council considers that the amended design is acceptable. Having regard to the principles established in the Courts by *Wheatcroft*¹, I find that the revisions are minor and my consideration of the revised drawing would not prejudice those who should have been consulted of the change that opportunity. I have therefore considered the drawings submitted with the planning application and the revised drawing.
4. The Council indicated at the Hearing that its emerging Cotswold Local Plan 2011-2031 could only be afforded limited weight given the stage it was at.

¹ *Bernard Wheatcroft Ltd v SSE* [JPL, 1982, P37]

Given this, and having regard to the guidance in paragraph 216 of the National Planning Policy Framework (the Framework) I have no reason to disagree.

Main Issue

5. The main issue in this case is whether or not the proposal would comprise sustainable development, having particular regard to its effect upon the character and appearance of the area and the setting of Cirencester.

Reasons

6. There is no dispute between the main parties that the appeal site is located outside of the settlement boundary for Cirencester. Accordingly the proposal for a mix of market and affordable housing would conflict with the aims of Policy 19 of the Cotswold District Local Plan (2001-2011) (CDLP) relating to acceptable development outside settlement boundaries.
7. However, both main parties agree that this policy is out-of-date because it forms part of a strategy which was designed to meet development needs up to 2011. Furthermore it fails to reflect the advice in the Framework to significantly boost the supply of housing. I agree that this is the case. This policy therefore carries substantially reduced weight in accordance with paragraph 215 of the Framework.
8. Both parties are therefore in agreement that the appeal proposal should be considered against the presumption in favour of sustainable development given by paragraph 14 of the Framework. I have no reason to disagree with the main parties in this regard.
9. The Framework makes it clear at paragraph 7 that there are three dimensions to sustainable development: economic, social and environmental. It also states that to achieve sustainable development, economic, social and environmental gains should be sought jointly and simultaneously through the planning system.
10. The Council's main concern with the proposal is that there would be conflict with the environmental role of sustainability because of the harm that would be caused to the character and appearance of the area.
11. The appeal site is located to the north east of Cirencester and comprises agricultural grazing land. It is located within the Cotswolds National Character Area. At a more local level, it is identified as being within the North Cirencester Special Landscape Area (SLA), which includes the River Churn Valley between Stratton and Bowling Green. The purpose of the SLA designation is to provide protection for locally significant and attractive landscapes that, although not nationally designated, are considered to be of comparable quality to Areas of Outstanding Natural Beauty (AONB).
12. The eastern part of the site is relatively flat, before sloping steeply down to the west to Bowling Green Lane and the Churn Valley and Stratton beyond. The southern part of the site has an unusual landform comprising undulating topography as a result of shallow quarrying that has taken place upon it. It is known locally as the 'Humpty Dumps'.
13. To the east of the site are the rear gardens of properties in Berry Hill Crescent, which comprise a range of boundary treatments and landscaping. The dwellings at this point are set off the boundary with the appeal site and are

largely low rise. There is 2 storey residential development backing onto the site along its southern boundary, and also to the south west. Whilst varied in form and design, the boundary treatment of nearby residential gardens provides a distinct dividing line between the built form of Cirencester and the pastoral landscape of which the appeal site forms part. The northern boundary of the site is defined by a field hedgerow with trees, beyond which is further agricultural land.

14. Whilst located adjacent the built form of this part of Cirencester, I consider that the appeal site's open undeveloped character reflects the countryside characteristics of nearby agricultural land. Its steep slope leading down to the Churn Valley makes an important contribution to the unspoilt rural green corridor between Cirencester and Stratton. It also makes a positive contribution to the rural setting of Cirencester.
15. The appeal site appears to be well used for recreational purposes. It has a public footpath across it and a number of informal routes upon it were apparent on my site visit. Although situated on private land, the 'Humpty Dumps' are landscape features which are clearly valued by local people. The Monarch's Way long distance route runs along the western boundary of the site from which the appeal site is visible, and there are a number of public rights of way further west from where the appeal site is visible also.
16. The development of the site would inevitably result in changes to local landscape character due to the change in land use of part of the site from grazing to residential development. This is not disputed. The issue in this case is whether or not that change would be unacceptable when assessed against the policies of the development plan and the Framework taken as a whole.
17. The appeal proposal has two distinct parts; the dwellings proposed close to the eastern boundary of the site and those on the southern part.
18. In wider landscape terms, the new dwellings on the southern part of the site would not be overly prominent. They would be viewed within the context of existing residential development. However, their siting would have an impact on the adjoining public footpath. At present as one enters the appeal site at its southern end it is obvious that the user has reached the countryside. Open views across the site are experienced and the 'Humpty Dumps' landscape is a prominent feature at this point.
19. The siting of the new dwellings on this part of the site would bring residential development significantly closer to the footpath than the current situation. It would have an enclosing effect on this part of the path and would delay the experience of users of the path reaching the open countryside. This would be likely to reduce the enjoyment of the use of the footpath at this point. The openness and attractive rural characteristics of the appeal site and its relationship to the wider landscape would be diminished as a result. The area of open space to the side of the footpath would be limited and would not be sufficient to mitigate this harmful impact.
20. Furthermore, the new dwellings on this part of the site would be sited largely in the area of undulating ground. This locally valued landscape feature would be unlikely to be retained following the development as there would be a high probability that the site would be levelled to make way for the construction of the new road and dwellings. The area of the 'Humpty Dumps' that would

remain in the open space would be small. The value of this landscape feature would be significantly diminished as a result of the proposal.

21. I note the appellant's submissions that the proposed development of the site would ensure that the Church of St John the Baptist would remain visible from the footpath across the site. Viewpoint 1B of the appellant's Landscape and Visual Impact Assessment² (LVIA) demonstrates that this would be the case. However, at present from the footpath the church is a prominent feature in the townscape. The new dwellings on plots 20 and 21 would be in the foreground of views of the church. Their roofs would compete with the scale of the church and would as a result significantly reduce the appreciation of this prominent building in the townscape from the footpath.
22. The dwellings on the eastern part of the site would be elevated in the wider landscape, sited on a prominent ridge. Although not sited on the slope of the field, the roofscape of plots 1 and 3-10 inclusive would be likely to be visible from Monarch's Way. They would also be visible from Stratton and from footpaths in the Churn Valley to the west of the site, albeit such views would be likely to be filtered by existing trees and landscaping to a degree.
23. In close distance views from the footpath that crosses the site, as demonstrated in the LVIA, the new dwellings would be prominent, dominant features representing a hard urban edge to the proposed open space, in contrast to the low rise, soft edge that the current properties display. This would be harmful to the rural character of the area. Whilst the style of the bungalows in Berry Hill Crescent is not reflective of the traditional Cotswold vernacular, this is not sufficient reason to allow a scheme of this nature, given the harm that I have identified.
24. Furthermore, the dwelling on plot 2 would be prominent in views from the footpath that crosses the site and particularly prominent in views from the Monarch's Way. The tall gable wall and the roof of the projecting gables would have an urbanising effect upon this area of countryside and would be a prominent feature on the hillside.
25. I acknowledge that the new road has been designed to reduce its impact on the character and appearance of the area. However, whilst the bunded design would reduce the visual effects of the road in views from the west, it would be unlikely to screen cars parked within it. Moreover, it would be unlikely to prevent light spillage from street lighting or vehicles headlamps particularly at night. These matters add to my concerns about the impact of the development on the character and appearance of the area.
26. I note the appellant's submissions that they have designed the proposal to reflect the concerns raised by the Inspector³ in dismissing a larger residential scheme on the site. I also acknowledge that the new dwellings would reflect the Cotswold vernacular and that local materials would be used. However, given the harm that I have found, these matters do not justify the proposal.
27. In light of my findings, I conclude that the appeal proposal would represent a significant encroachment of built development into this pleasant and distinctive landscape. It would significantly erode the landscaped setting of Cirencester. The development on the eastern part of the site would significantly reduce the

² Landscape and Visual Impact Assessment Peter Brett (January 2017)

³ Ref APP/F1610/W/16/3144113

open, green, rural corridor between the town and Stratton, and would have a negative influence on the valley side of the River Churn and the characteristics of the SLA. Furthermore, the proposal would not retain the locally valued landscape features of the area. There would as a result be harm to the landscape character and appearance of the area.

28. As such the proposal would conflict with saved CDLP Policy 42 which amongst other matters requires that development is environmentally sustainable and designed to respect the character, appearance and local distinctiveness of Cotswold District. There would also be conflict with saved Policy 45 which, of relevance to this case, requires the retention of attractive, existing landscape features (the 'Humpty Dumps'), and paragraph 109 of the Framework which states that the planning system should contribute to and enhance the natural and local environment by amongst other matters, protecting and enhancing valued landscapes.
29. I am in no doubt that the provision of both market and affordable housing as proposed would comply with the social and economic needs of communities in the terms of Policy 8 of the CDLP. However, the harm that would be caused to the SLA as a result of the encroachment of residential development into the open, green, rural corridor between Cirencester and Stratton would be significant and unacceptable. Accordingly the proposal would conflict with saved Policy 8 of the CDLP also. There would also be conflict with paragraph 7 of the Framework which makes it clear that the environmental role of sustainability requires the planning system to contribute to protecting and enhancing our natural built and historic environment. For the reasons given, this would not be achieved in this case.

Other Considerations

30. Paragraph 47 of the Framework establishes that local planning authorities should boost significantly the supply of housing. Whilst there is no dispute that the Council can demonstrate a 5 year supply of deliverable housing sites, there is no indication in the Framework that the presence of a 5 year supply should preclude further housing from being regarded as beneficial. The provision of market housing upon the site, including bungalows carries notable weight in favour of the proposal.
31. Whilst I note the Council's submissions that its affordable housing need can be met by other sites in and around the town including a strategic site at Chesterton, this is disputed by the appellant. Having regard to the evidence presented by the appellant⁴, which was not disputed, I find that the provision of 10 units of affordable housing to support local needs carries considerable weight in favour of the appeal scheme.
32. I am in no doubt that the provision of both market and affordable housing upon the site would support the economic and social roles of sustainability as set out in paragraph 7 of the Framework. This includes the creation of new jobs and the support the intended future occupiers of the new dwellings would be likely to give to nearby services and facilities. However, I consider that such matters carry limited weight as these benefits would be so regardless of where the dwellings were constructed.

⁴ Both orally and in the Affordable Housing Statement of Case Stuart Larkin and Associates Ltd

33. The appeal site is close to Cirencester which is the main service centre in the District. The shops, services and facilities of the town would be accessible to the intended future occupiers of the new dwellings, who would have a choice of how they wished to access them, whether that be walking, cycling, public transport or car. This amounts to a social and environmental benefit in favour of the scheme. But given that such benefits could be achieved elsewhere on sites within or near to Cirencester, such benefits are not unique to the appeal site and therefore I afford them limited weight.
34. The provision of open space as set out in the Unilateral Undertaking referred to above would address some of the concerns raised by interested parties and the Town Council. It would formalise the current informal community use of the site and would be likely to ensure the future use of this part of the site. However, the provision of public open space would be a necessary part of a scheme of this nature in accordance with the terms of CDLP Policies 34 and 43. Given this, I attach limited weight to this matter in my overall Decision.
35. In reaching this view, I am mindful that the appellant could fence the site without necessarily having to obtain planning permission. The informal access that a number of nearby residents have onto it could also be revoked. I also note the letter⁵ submitted in support of the proposal expressing that such measures would be likely to make the letting of the land easier for agricultural purposes. However, such enclosure would be likely to be of a low height and would have significantly less visual impact than new housing on the site. Whilst it may preclude informal access across the site, I am not convinced that there is any real intent for such development to take place. Even if it did, users of the footpath through the site would still be likely to enjoy the special qualities of the site and its relationship to the wider landscape.
36. I also acknowledge as discussed at the Hearing that the appellant could level the undulating ground which would result in the locally valued landscape feature being destroyed. However, whilst noting this matter, on the basis of the evidence before me, I am not convinced that there is a real probability that this would occur to make the site more attractive to a prospective agricultural tenant. Accordingly I attach limited weight to this matter in my consideration of the proposal.
37. I note that the appellant proposes to remove contamination from the site. This would be likely to be a requirement of the grant of planning permission for the residential development of it in any event. As such I consider that this matter does not amount to a benefit in favour of the scheme.
38. I acknowledge that the implementation of enhancement measures would be of benefit to biodiversity in the area. However, I am not convinced on the basis of the evidence before me that such measures would result in an enhancement in the quality and diversity of habitats to that which already exists. Accordingly limited weight is given to this matter.

⁵ Boyle and Grimes dated 17 November 2017

39. The proposal would result in financial contributions being paid to the Council as part of the New Homes Bonus. However, the Planning Practice Guidance⁶ makes it clear that a local financial consideration should only be considered material to a particular decision if it could help make the development acceptable in planning terms. It also states that it would not be appropriate to make a decision based on the potential for the development to raise money for a local authority or other government body. I am not aware of any evidence to demonstrate that the financial payment which would be likely to arise from the New Homes Bonus would help to make the proposal acceptable in planning terms and as such I give this matter no weight in my consideration of the scheme.
40. Both main parties acknowledge that the proposal would have no adverse impact on the AONB. The appellant also submits that the development of this site would reduce pressure to develop within the AONB, although has failed to provide convincing evidence to demonstrate this. Such matters do not weigh in the scheme's favour.
41. The proposal would make a contribution to pre-school, primary and secondary education which is secured by the executed Section 106 Agreement with the County Council. Given that such contributions to education are necessary to mitigate the impacts of the new dwellings as a result of the pressure that the intended future occupants would place on nearby schools, I find that this matter does not comprise a benefit in favour of the proposal.
42. The appellant has made reference to a number of appeal decisions in support of the proposal, including whether the principle of development is acceptable and the impact on the character and appearance of the area. It is well established that each planning application and appeal should be determined on its individual merits. I have considered the appeal proposal accordingly. The matters raised in the referenced appeals are not directly comparable to that before me given that I have found that significant, unacceptable harm would be caused to the character and appearance of the area. I have therefore afforded them little weight in my consideration of the proposal.

The Planning Balance

43. For the reasons given, I have found that the proposal would result in significant, unacceptable harm to the character and appearance of the area, in conflict with the development plan and the Framework. As a result the proposal would not contribute to protecting and enhancing our natural, built and historic environment as required by the environmental role of sustainability.
44. Set against this harm are the economic, social and environmental benefits that I have found, including the provision of market and affordable housing which carries notable and considerable weight. There are other benefits of the proposal as set out above, however for the reasons given they carry at best limited weight in favour of the scheme.

⁶ Paragraph: 011 Reference ID: 21b-011-20140612

45. The Framework makes it clear at paragraph 8 that to achieve sustainable development economic, social and environmental gains should be sought jointly and simultaneously through the planning system. These roles should not be undertaken in isolation, because they are mutually dependent.
46. The harm that would be caused to the landscape character of the area and the setting of Cirencester would be significant, would conflict with the development plan and the environmental role of sustainability. The benefits associated with the proposal would not either individually or cumulatively outweigh this harm. Accordingly the proposal would not comprise sustainable development for which the Framework indicates there is a presumption in favour.
47. I conclude that the adverse impacts of granting planning permission for the proposal would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.

Conclusion

48. For the above reasons, and having regard to all other matters raised, the appeal is dismissed.

R C Kirby

INSPECTOR

Richborough Estates

APPEARANCES

FOR THE APPELLANT

Mr G Wakefield	Hunter Page Planning
Mr K Garvey	Kings Chambers
Mr N Evers	Peter Brett Associates LLP
Mr E Tyack	Tyack Architects
Mr S Larkin	Stuart Larkin and Associates Ltd

FOR THE COUNCIL

Miss D Smith	Team Leader
Miss K Smith	Landscape Officer

INTERESTED PARTIES

Cllr M Harris	District and Town Councillor
Mr R Gunner	Cirencester Amenity Society
Mrs E Moore	Local Resident
Mr P Cook	Local Resident
Mrs J Winstanley	Local Resident
Ms Skaysbrooke Read	Local Resident

DOCUMENTS SUBMITTED AT THE HEARING

1. Drawing of Retirement Housing Allcourt, Lechlade
2. Drawing No 1 Existing Site Plan
3. Concept Layout Tyack Architects
4. Concept Layout 2 Tyack Architects
5. Landscape Statement for Land at Whiteway View, Stratton Illman Young

DOCUMENTS SUBMITTED AFTER THE HEARING

1. Unilateral Undertaking dated 15 December 2017