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## Appeal Decision

Site visit made on 17 March 2015

**by David Morgan BA MA (T&CP) MA (Con Studs IoAAS) MRTPI IHBC**

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

**Decision date: 5 May 2015**

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**Appeal Ref: APP/C1625/A/14/2223141**

**Land adjacent to Gloucester Road, Alkington, Newport GL13 9PZ**

- 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 Elevation One against the decision of Stroud District Council.
  - The application Ref 13/2530/OUT, dated 20 November 2013, was refused by notice dated 12 May 2014.
  - The development proposed is outline planning permission for 10 dwellings.
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### Decision

1. The appeal is dismissed.

### Procedural matters

2. The planning application was submitted in outline with all matters reserved; the appeal has also been determined on this basis.
3. The planning application was submitted in the name of Elevation One, although the appellant is identified as Mr Simon Littlewood on the appeal application form. Notwithstanding this point, in the absence of any formal indication as to any changes in this regard, I have used the name identified in the initial planning application form.
4. After the date of the submission of the appeal, Between 28 November 2014 and 27 February 2015, amendments were applied to the Planning Practice Guide (PPG) following a ministerial written statement to Parliament setting out national policy on planning obligations and affordable housing contributions. In effect, these amendments exempted residential development proposals of 10 units or less from making affordable housing contributions and those sought under tariff-based mechanisms for local infrastructure. I have taken these amendments into account in my reasoning below.
5. Similarly, on 6 April 2015 the transitional period under CIL Regulation 123(3) for the consideration of section 106 planning obligations designed to collect pooled contributions ('tariffs') came to an end. I have also taken this consideration into account in my reasoning below.

## **Main Issues**

6. These are a) whether or not the proposals can be considered sustainable development in the context of local and national policy, including the definition of such set out in the National Planning Policy Framework (henceforth referred to as 'the Framework'); b) whether the proposals constitute an unwarranted incursion into the open countryside, so harming its character and appearance; c) whether the proposals would safeguard the living conditions of future occupants with regard to noise and disturbance and d) whether there are any other material considerations, specifically whether or not the Council can demonstrate a 5 year supply of housing land and the delivery of affordable housing as part of the scheme, that would justify the development being allowed now.

## **Reasons**

7. The appeal site comprises a rectangular plot of land adjacent to the A38 on the southern periphery of Newport, an attenuated linear settlement formed along the trunk road. To the south of the plot the land level falls noticeably below that of the road, though it rises to be level with it at its northern boundary. The main body of it's area appears to be fallow pasture, though it is screened to a degree on the eastern road-facing side by mature trees and shrubs and, to a lesser extent, the same on the remaining field and track boundaries.
8. To the north of the site lies the former Newport Towers Motel, a large development of approximately mid C20 date now in a state of evident disrepair. Whilst the former motel site lies within the identified settlement boundary, the appeal site lies immediately outside this demarcation.
9. The appellant indicates that a considerable proportion of the units (between 30% and 50%) will be affordable, so responding to local need and therefore compliant with the Council's emerging development plan aspirations. The appellant states the remaining market housing will ensure the development is viable. However, no planning obligation is presented to secure the affordable housing, nor is there an economic viability statement to help justify the development.

## **Sustainable development**

10. The appellant asserts the appeal site has 'excellent links to the surrounding network of villages as well as the larger conurbations of Dursley and Wotton-Under-Edge', and goes on 'there are a good array of local services including a shop/garage and several public houses within 1.5 miles'. However, the 'excellent links' are not defined, nor are the 'good array of local services' identified. Whilst I was able to note the Stagecoach Inn in the centre of the settlement I was not able to readily locate the garage/shop referred to.
11. The Council however, identify Newport as a 'fourth tier settlement', that is an 'accessible settlement with minimal facilities' in relation to policy CP3 of their emerging local plan (The Stroud District Local Plan: Submission Draft or SDLP). The scope of development in such settlements is anticipated to address local needs only, and to improve facilities. That said, the Council accepts the settlement has reasonable access to public transport services on the A38.

12. The matter of local need is addressed below in other considerations. However, from the evidence before me it is clear that the facilities on offer in Newport are not sufficient to sustain levels of development that can properly be considered sustainable. With the absence of key community facilities and employment opportunities, occupants of new dwellings would in all probability also be dependent on the motor car for much of their needs, such as household provisioning, health and educational services as well as access to community facilities.
13. Moreover, in 2005 the then local plan Inspector, when considering the appeal land as an omission site, concluded in very similar terms, stating 'Newport has few services and facilities of its own and the consequence of this location would lead to a high degree of car dependency with residents travelling elsewhere for employment and day-to-day and higher order facilities'. From the evidence before me and from what I saw on my visit, very little has changed that suggests I should take a different view. One legitimate consideration however is the grant of planning permission by the Council for outline permission for up to 39 dwellings on the Newport Towers site; suggesting a less than unequivocal view on residential development in the settlement in the past. That said, I have only very limited details of this case before me and, significantly, it is clearly a blighted and degenerating site and moreover, lies within the established settlement boundary. These factors present a set of circumstances materially different to those before me, and this significantly diminished any weight I may be invited to apportion them.
14. Concluding on the first main issue therefore, I consider the proposal would not be sited in a sustainable location, contrary to policy CP3 of the SDLP. However, this remains a policy of the emerging development plan which, whilst at examinations stage, is still some way off being either considered sound or formally adopted by the Council. For these reasons, and in accordance with paragraph 216 of the Framework, I am able to afford it only limited weight. Be this as it may, The Framework states in paragraph 7 that it is, inter alia, the role of the planning system to deliver a 'high quality built environment with accessible local services that reflect the community's needs and support its health, social and cultural well being'. Paragraph 55 of the same states that in order to promote sustainable development in rural areas, housing should be located where it will enhance and maintain the vitality of rural communities. Considering the proposed development in the light of the above, I conclude, in locational environmental terms, that the proposals cannot be considered sustainable development and are therefore contrary to one of the primary objectives of the Framework.

### **Character and appearance**

15. I readily concur with the appellant that the site may not be considered 'valuable agricultural land'. However, whilst it can be acknowledged as proximate to the settlement, there is a good case for concluding it does lie within 'open countryside'. Newport is very characteristically a linear settlement, with its pattern unquestionably dominated by the great trunk road. The appeal site is separated from the Newport Towers site by an agricultural access track and the boundary planting I have already noted. Rather than presenting as a recessive, discreet parcel of land capable of comfortable annexation into the form of the village, the appeal site visibly extends into the open fields beyond the periphery of the settlement. Development here would tangibly and

forcefully extend the strident linear urban form of the village beyond its established boundaries into the open countryside.

16. I have taken into account the existing tree and shrub cover on the boundaries of the site and the incremental infill on the western side of the A38 in proximity to it. However, this latter development is within the settlement boundary and represents infilling between the body of the settlement and the former chapel to the south. Moreover, its extent would be apparent in more fleeting views from the wider countryside to the south and east, specifically from Haycroft Lane. For these reasons I conclude the proposals would cause material harm to the character and appearance of the surrounding countryside, contrary to saved policy NE10 of the Stroud District Local Plan 2005 (SDLP 2005), which seeks to conserve or enhance the special features and diversity of the different landscape character types in the district. Moreover, in these specific circumstances, the proposals would also be in conflict with one of the core planning principles of the Framework, which anticipates that planning (decisions) should 'take account of the different roles and character of different areas ...recognising the intrinsic character and beauty of the countryside and supporting thriving rural communities within it....'. By failing to do so, the proposals would result in significant and material harm to the intrinsic character and beauty of the countryside in the immediate environs of the settlement, contrary to the expectations of the Framework.

#### **Living conditions**

17. The acoustic report submitted by the appellant accepts that it is not 'possible to achieve the 'good' range equivalent noise levels in the habitable rooms of the development' due to the anticipated day time noise levels generated by the adjacent trunk road (suggested predicted noise levels at the facades of the dwellings on the basis of the appellant's evidence indicate something in the order of 64 – 66 dB). Even if the interiors of the dwellings could be effectively insulated, it is extremely doubtful in my mind that the 'private amenity spaces to the front and rear' (of the proposed dwellings) suggested in paragraph 3.0 of the appellant's grounds for appeal would achieve the aim of 'creating a tranquil setting for the family development' anticipated in the same paragraph.
18. Although there may be a measure of mitigation capable of being secured through condition that could reduce noise levels of the adjacent trunk road, in the absence of compelling evidence that this could be achieved, I remain unconvinced that material harm to the living conditions of future occupiers could be avoided. For these reasons the proposed development would conflict with saved policy GE1 of the SDLP 2005, which seeks to prevent development that would lead to an unacceptable level of noise, general disturbance, smell, fumes, loss of daylight or sunlight, loss of privacy or have an overbearing effect.

#### **Other considerations**

##### *Affordable housing*

19. A major consideration in favour of the case, as the appellant presents it, is the provision of affordable housing as part of the scheme. This is indicated as being at 30% (in accordance with local development plan saved policy HN4 of the SDLP 2005 and its attendant Supplementary Planning Document: SPD), although the appellant indicates this could be increased to 50% (five units) 'if

deemed acceptable'. The appellant further indicates that the remaining 5 market units 'will allow the scheme to be financially viable'. Moreover, the scheme is presented as a kind of hybrid exception site case, partly relying on the Council's unsaved policy HN6 of the SDLP 2005 and SPD, (which allowed for 'permission to be granted for affordable housing to meet local needs within or adjacent to settlement boundaries...') and paragraph 54 of the Framework which also acknowledges that one approach could be to consider allowing some market housing 'to facilitate the provision of significant additional affordable housing to meet local needs'.

20. Whilst very limited weight can be apportioned to the unsaved policy, paragraph 54 of the Framework is legitimately a material consideration, and in any event both are consistent in relying on their justification being predicated on 'local needs'. To establish a justification of such local need the appellant refers to a report prepared by the Severn Voice Group of parishes, formed of adjacent parishes but excluding that of Alkington, in which Newport and the appeal site lies. This report refers to a total of 35 households in need within the grouping. The appellant also refers to the Taylor Report published in 2008 and The Office for National Statistics, which suggest an increase of rural migration of 16% by 2028, exacerbating local affordable housing need.
21. The Council accepts in their statement that there is a very substantial unmet District-wide need for affordable housing, and this must suggest, in the broadest terms at least, that there is some latent demand within Alkington. However, paragraph 54 of the Framework makes clear any consideration of permitting development should be predicated on local need. Moreover, the elements of the SPD quoted by the appellant refer to 'a proven specific local need' to justify exception site development. The appellant presents no such evidence on these terms; Alkington is outwith the Severn Voice Group of parishes and the detailed need in this area, such as it is made clear in evidence, is not analogous to or directly related to 'local need' in respect of Newport or the wider parish of Alkington.
22. Moreover, whilst the market housing is presented to ensure the viability of the greater scheme, this is not supported by a form of economic viability appraisal demonstrating the ability of the scheme as a whole to deliver the 5 units of affordable housing offered. Having said that, I accept there is in all probability a latent demand for affordable housing in the area. In light of this, and paragraphs 47 and 50 of the Framework which seek to significantly boost the supply of housing and ensure a wide choice of high quality homes, I am able to apportion a medium degree of weight to such provision in favour of the scheme. This is my conclusion acknowledging the absence of a completed, signed and dated section 106 agreement or undertaking setting out the detailed provisions for its delivery. In this regard I conclude in principle, as do the Council, that this could be secured through an appropriately worded condition.

#### *Five year land supply*

23. The appellant argues that the Council cannot at present demonstrate a five year supply of housing land, and this is not expressly refuted by them. However, they openly state they do not rely in this instance on policy HN10 of the SDLP 2005 which restricts development outside identified settlement boundaries on the basis that it made provision for housing only up to 2011.

Paragraph 49 of the Framework makes clear that where a Council cannot demonstrate a five year supply of housing, their policies relevant to the supply of housing cannot be considered up-to-date. In the absence of such a demonstration, and given the acceptance by the Council that HN10 is 'relevant to the supply of housing', there is no doubt in my mind this policy cannot be given the full force of weight in the circumstances of this case.

24. However, it is not this policy on which the Council rely, instead citing policy NE10, which is not a housing constraint policy but one formulated to preserve or enhance the special features and diversity of the landscape. It may not therefore be considered directly relevant to the supply of housing and carries the full weight of saved development plan policies consistent with the relevant aims of the Framework (to which I have referred above).

### **Planning balance and conclusions**

25. Nevertheless, still with policy HN10 in mind, in order for the out-datedness of policies of a plan to trigger consideration under the fourth bullet point of paragraph 14 of the Framework (that permission be granted 'unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits') the development must first be considered sustainable under the terms of the Framework. These are made clear in paragraph 7, where the three functions of social, economic and environmental sustainability are set out.
26. Although not expressly cited by the appellant in support of the case, I am willing to accept there would be some short-term economic benefit from the proposals coming forward in relation to a modest uplift to the local economy and to employment opportunities for the duration of its construction. However, for the reasons I have set out above in respect of the main issues the development would not be in a sustainable location, could not convincingly provide a satisfactory standard of accommodation for future occupants and would cause a significant degree of harm to the character, appearance and intrinsic beauty of the countryside. For these reasons I conclude the development would not meet the social and environmental components of the definition, and may not be deemed sustainable in the terms set out in paragraphs 7 and 14 of the Framework, and therefore no such presumption in favour of it being permitted prevails.
27. Moreover even if, under whatever circumstances, it could be considered sustainable, in my view the harm in respect of future living conditions and substantial harm to the character and appearance of the countryside would significantly and demonstrably outweigh the modest benefits of bringing forward the small number of market and affordable houses proposed here, to which I have apportioned a medium degree of weight.
28. I have given detailed consideration to the changes to the PPG in respect of planning obligations and affordable housing contributions noted above and their implications for this case. More particularly, I have considered whether or not the main parties should have been consulted on them prior to my determination of the case. Clearly, as I have determined to dismiss the appeal on the substantive grounds of sustainability, harm to countryside character and living conditions, these changes have no direct bearing on the outcome of the appeal. Certainly this is the case in respect of the contributions anticipated in respect to open space identified in the Officer Report. Moreover, the provision

of affordable housing is one of the central justifications of this particular case and I have concluded, in all reasonableness, that the appellant would have continued with the delivery of a scheme for affordable housing pursuant to an appropriate condition, had I been minded to allow the proposal notwithstanding the revisions to the PPG.

29. Similarly with regard to the CIL regulations, I have given consideration to the need to consult the parties on this matter prior to the determination of the case, particularly with regard to the open space contribution identified above. For similar reasons, because of the dismissal of the appeal and the absence of a signed obligation, I have determined not to do this, confident no parties interest in respect of this appeal have been compromised.

30. In conclusion therefore, for the reasons I have set out, having considered all matters raised, I determine that the appeal be dismissed.

*David Morgan*

**Inspector**

Richborough Estates