



Appeal Decision

Site visit made on 2 November 2023

by **C Rafferty LLB (Hons), Solicitor**

an Inspector appointed by the Secretary of State

Decision date: 31 January 2024

Appeal Ref: APP/G1630/W/23/3325421

Land off Ruby Avenue, Bishops Cleeve GL52 7ZN

- 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 Rooftop Housing Association Ltd against the decision of Tewkesbury Borough Council.
 - The application Ref 21/01173/FUL, dated 25 September 2021, was refused by notice dated 21 March 2023.
 - The development proposed is proposed residential development to erect 22 units with associated car parking; development 100% affordable
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Decision

1. The appeal is allowed and planning permission is granted for the proposed residential development to erect 22 units with associated car parking; development 100% affordable at Land off Ruby Avenue, Bishops Cleeve GL52 7ZN in accordance with application Ref 21/01173/FUL, dated 25 September 2021 subject to the conditions set out in Schedule 1 of this decision.

Application for Costs

2. An application for costs was made by Rooftop Housing Association Ltd against the Council. This application is the subject of a separate decision.

Preliminary Matters

3. The appeal was originally to be determined via a hearing. However, during the course of the appeal and having considered representations from the main parties, I deemed the written representations procedure to be appropriate for this case.
4. Since the determination of this application, the Government published a revised National Planning Policy Framework (the Framework) on 19 December 2023. The main parties have been given the opportunity to provide comments on the updated Framework, which have been taken into account in preparing this decision.

Background and Main Issues

5. The main issues are whether the proposal would:
 - comply with paragraph 97 of the Framework regarding services and facilities;
 - provide affordable housing in a seamless and integrated manner in accordance with Policy SD12 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011-2031 (the JCS); and

- make adequate provision for education, affordable housing and waste and recycling facilities through a planning obligation.

Reasons

Provision of Facilities and Services

6. The site is a parcel of open land off Ruby Avenue. The surrounding area is primarily residential in nature, with a range of commercial uses and services also present, such as a medical practice, a shop and a gym. The proposal seeks planning permission for the erection of 22 residential units of affordable housing.
7. Paragraph 97 of the Framework states that in order to provide the social, recreational and cultural facilities and services the community needs, planning policies and decisions should, among other things, plan positively for the provision and use of shared spaces, community facilities and other local services to enhance the sustainability of communities; guard against the unnecessary loss of valued facilities and services; ensure that established shops, facilities and services are able to develop and modernise, and are retained for the benefit of the community; and ensure an integrated approach to considering the location of housing, economic uses and community facilities and services. The proposal would make provision for 22 affordable housing units, but would not provide additional facilities or services.
8. The appeal site forms part of the wider mixed-use Cleavelands development, for which outline planning permission was granted in July 2012 for up to 550 dwellings with associated facilities, to include a high street, community facility and open space¹. The masterplan for this development designated the appeal site as part of 'High Street' being an area of retail and employment class uses, including 16 live/work units, and comments from interested parties indicate a strong local preference for such a use at the site. However, no reserved matters application was submitted in respect of this outline planning permission within the required timeframe. Accordingly, the site does not benefit from any such designation at the time of this appeal either within local policy or as a result of this permission.
9. Planning permission was later granted in February 2020 for the erection of a pub and restaurant with ancillary accommodation, community amenity areas and associated access, parking and landscaping at the site². Based on the evidence before me and my observations on site, this planning permission remains implementable but the development has not yet come forward. In granting permission for the scheme before me, it is therefore reasonable to conclude that the permitted pub and restaurant use would not be developed.
10. However, it remains that this use has not commenced such that no existing or established service or facility would be lost. The main parties also agree that the original applicant has no intention to implement the permission believing that there is no sufficient demand for the use in this location and following a 6 month marketing exercise in 2019 that resulted in no bids. A later marketing exercise in 2020 similarly resulted in no bids. While concerns have been raised that these marketing exercises were not long enough, given that the proposal does not involve the change of use of an existing public house, there is no policy requirement setting out how long the marketing periods should have been, and I note that the Officer's Report did not find issue with these periods. On this basis, notwithstanding that the

¹ 10/01216/OUT

² 18/01031/FUL

permission for the pub and restaurant use could still be lawfully implemented at present, the existence of this fallback position carries little weight.

11. The site is located within the residential development boundary of Bishops Cleeve, defined as a Rural Service Centre within the JCS and recognised as a settlement that contains a higher range of services and facilities. In addition, I noted on my visit that the immediate area comprises a range of facilities to serve the local community, including a shop, a medical centre, and a gym. There is nothing substantive before me to suggest that the facilities both local and within the wider area would be unable to continue to effectively serve the needs of the community if the proposal were to be granted planning permission.
12. As such, while the proposal would not provide for any services and facilities, it would not result in the loss of existing services and facilities or prevent established services and facilities from further modernising or developing. Future occupiers of the development would have the opportunity to make use of the existing services located in close proximity as part of their daily routines and in meeting their day to day needs, ensuing an integrated approach in the proposed location of this housing proposal and the nearby community facilities and services.
13. For the reasons given, the proposal would comply with paragraph 97 of the Framework insofar as it relates to the provision of services and facilities.

Affordable Housing

14. Policy SD12 of the JCS outlines the approach to the provision of affordable housing in new development. In particular, it states that, where possible, affordable housing should be provided on site and should be seamlessly integrated and distributed throughout the development scheme. The proposal relates to the provision of 22 affordable housing units. The Council raises no objection to the provision of a 100% affordable housing scheme, but has expressed concerns that the proposal would result in a cluster of affordable housing at the site, rather than the affordable housing provision being integrated and sitting among market dwellings. I note that interested parties have expressed similar concerns.
15. I have been provided with the planning layout of the wider Cleevelands development, within which the appeal site is located. This demonstrates that, although clusters of affordable housing are provided as part of that wider scheme, in each phase of development these clusters are spread among and alongside the market dwellings. The Council contends that this complies with the definition of Affordable Dwellings within the section 106 agreement relating to that development, which refers to such dwellings 'to be built across the whole site', and lists clustering requirements for each phase of affordable housing provision, with limits of clusters of 8, 12 and 16 dwellings depending on the housing type and mix to be provided.
16. Nevertheless, this section 106 agreement is not directly applicable to the scheme that I have before me, and the relevant part of Policy SD12 is not an absolute requirement, but is to be followed 'where possible'. Given that the proposal relates wholly to affordable units, such distribution among the completed market housing of the Cleevelands development is not possible in this instance. I note a reserved matters approval for the erection of 30 dwellings, all of which are affordable units at a site directly to the north of the appeal site, resulting in a combined 52 affordable units in close proximity. However, I do not consider that this would prevent the proposal from being integrated within the wider residential setting.

17. The proposal would introduce residential development that would sit among the housing of the wider Cleavelands development scheme, which the main parties agree would be of a sympathetic scale and complementary design. Set back from Sapphire Road and facing the commercial development that serves the immediate community, it would create an avenue style approach to the wider residential area to the north, visible from and alongside multiple elements of the Cleavelands scheme. Even acknowledging that it would be immediately to the south of other affordable units and not dispersed among market dwellings, it remains that the proposal would be experienced as part of the overall residential use and setting of the immediate vicinity.
18. For the reasons given, the proposal would provide affordable housing in a seamless and integrated manner in accordance with Policy SD12 of the JCS.

Planning obligation

19. The Council's reasons for refusal stated that the proposal would fail to secure a planning obligation in relation to education contributions as requested by the County Council pursuant to policies INF6 and INF7 of the JCS. However, having updated its independent planning viability report concerning the impact of the education contributions on the viability of the proposal, the Council has withdrawn this reason for refusal as set out in the submitted Statement of Common Ground.
20. Furthermore, the Council is clear that its reason for refusal relating to the absence of a completed planning obligation to secure a minimum of 40% affordable housing or provide for recycling/waste bin facilities could be overcome by the provision of a suitably worded section 106 agreement in this respect. The main parties have supplied a completed planning agreement during the course of the appeal. Among other things, this secures the delivery of 100% affordable housing units on the site, being 22 units in total, and the payment of a refuse and recycling contribution to Council prior to first occupation of any dwelling.
21. For the reasons given, the proposal would make adequate provision for education, affordable housing and waste and recycling facilities through the completed planning obligation. In this regard, it would comply with Policies INF6, INF7 and SD12 of the JCS insofar as they seek to ensure new development delivers affordable housing, is served and supported by adequate and appropriate infrastructure and services, and that financial contribution towards the provision of infrastructure and services are sought through a planning obligation.

Other Matters

22. I note concerns from interested parties on a number of issues, namely: parking provision, highway safety, flood risk, living conditions, over supply of housing, character and appearance through the loss of open space, emergency vehicle access and sanitation.
23. With regard to highways and parking, the proposal would increase the amount of vehicular traffic in the vicinity. However, it would provide ample parking spaces prior to occupation of the dwellings. It would also utilise an existing junction off Ruby Avenue that based on my observations would provide good visibility. Taken together with the existing speed limits in the area, even acknowledging the additional traffic movements I do not consider that concerns regarding highway safety or parking provision would arise. There is also nothing substantive before me to suggest that emergency vehicles would be unable to access the site.

24. The precise positioning, layout and separation of the proposed dwellings in relation to both the surrounding commercial and residential uses, and the other dwellings proposed as part of the scheme, is such that the living conditions of both future and existing residents would not be compromised. The largely residential nature of the surrounds would also ensure the increase level of activity and movements associated with further dwellings would not create undue noise and disturbance.
25. While the proposal would result in the loss of an open area of space, it has been sensitively designed with a range of landscaping measures and planting that would ensure an effective visual integration within the immediate area. Although it would result in additional housing, combined with the other surrounding residential uses, it would not appear out of place or create undue visual harm and, as discussed below, would assist the Council in meeting its required housing land supply.
26. With regard to concerns regarding flooding and sanitation, the proposal is located in Flood Risk Zone 1 and has been accompanied by a flood risk assessment and drainage strategy that the Council deemed acceptable in its Officer's Report. Based on my observations, I have no reason to disagree. A condition would also ensure that the surface water and foul water drainage scheme is to be completed prior to occupation of the dwellings.

Planning Balance

27. Paragraph 11(d) of the Framework states that where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole. This includes, for applications involving the provision of housing, situations where the local planning authority cannot demonstrate a five year supply (or a four year supply, if applicable) of deliverable housing sites (with a buffer, if applicable) and does not benefit from the provisions of paragraph 76 of the Framework.
28. The main parties agree that the Council cannot demonstrate the required supply of housing. There is nothing substantive in the evidence before me to suggest that the provisions of paragraphs 76 or 77 of the Framework alter this position in this instance. The Statement of Common Ground sets out that the main parties agree that there are no adverse impacts of granting permission for the proposal that would significantly and demonstrably outweigh the benefits.
29. On the basis of my observations, I have no reason to disagree. The proposal would provide for 22 affordable housing units, a clear benefit of the scheme that carries significant weight. I have also found that the proposal would not cause harm in respect of any of the main issues. I have also addressed the other matters raised by interested parties above and, while I recognise the fallback position of the extant pub use permission at the site, for the reasons given above I have attributed this limited weight.
30. Accordingly, I find that there are no adverse impacts of granting permission for the proposal that would significantly and demonstrably outweigh the benefits, and that planning permission should therefore be granted subject to the imposition of suitably worded conditions.

Conditions

31. I have had regard to the conditions suggested by the Council, and have provided the appellant with an opportunity to provide comments on these, including those which are pre-commencement conditions.
32. I have attached the standard timeframe condition, as well as a condition specifying the relevant plans in accordance with which the development is to be carried out in the interests of certainty and proper planning. As the plans condition contains reference to Site Layout Plan D20 RevN, a separate condition that the development be carried out in accordance with the site levels noted thereon is not necessary. A condition that the development be in accordance with the agreed waste strategy is also necessary to ensure effective implementation of waste minimisation.
33. A condition that no development shall take place until a Construction Method Statement has been submitted to, and approved in writing is necessary in the interests of highway safety. A further pre-commencement condition is also necessary in the interests of protection for existing trees. A condition that no development above plate level shall take place prior to approval of external materials has been attached in the interests of the surrounding character and appearance.
34. I have attached various conditions that are to be discharged prior to first occupation. These relate to: drainage scheme completion; installation of bird boxes and hedgehog fencing; submission of a noise assessment relating to the pumping station; layout of access, parking and turning; and provision of a dropped kerb. These are necessary in the interests of: flood risk; ecology; living conditions of occupiers; highway safety and parking provision, respectively. I further attach a condition relating to the approval of a residential welcome pack in the interests of promoting sustainable transport.
35. I have attached a condition that planting shall be carried out in the first planting season following the occupation of any building or the completion of the development, whichever is the sooner, in the interests of surrounding character and appearance. A condition restricting the hours of demolition and construction works is necessary in the interests of the living conditions of surrounding residents. I have also attached a condition outlining the approach should contamination be found during the course of construction of the development to ensure there are no unacceptable impacts with regard to land contamination. Finally, a condition that no external lighting is to be installed without approval is required in the interests of character and appearance and the living conditions of surrounding residents.

Conclusion

36. For the reasons given, the appeal should be allowed subject to the conditions at Schedule 1.

C Rafferty

INSPECTOR

SCHEDULE 1 - CONDITIONS

1. The development hereby permitted shall begin not later than 3 years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans and documents:
 - Site Location Plan D100 Rev A;
 - Site Layout Plan D20 Rev N;
 - Floor Plans and Elevations House Types C Plots 1-2, 21-22 D14 Rev A;
 - Floor Plans and Elevations House Types B/D Plots 3-4 D12 Rev B;
 - Floor Plans and Elevations House Types B/D Plots 5-6 D11 Rev B;
 - Floor Plans and Elevations House Types A1 Plots 7-12 D10 Rev A;
 - Floor Plans and Elevations House Types F/F1 Plots 13-16 D16 Rev B;
 - Floor Plans and Elevations House Types E Plots 17-18 D15 Rev A;
 - Floor Plans and Elevations House Types C Plots 19-20 D13 Rev A;
 - Detail Planting Plan D900 Rev B;
 - Bin Strategy Plan D95;
 - Amenity Areas and POS figures D20;
 - Wastewater Plan 506148-2;
 - Clean water plan 506148-1;
 - Gas Plan 21306639 dated 15 February 2021;
 - Landscape and Habitat Management and Maintenance plan dated August 2021;
 - Storm Water Calculations dated 30 November 2022;
 - Drainage Strategy 21-063/502a DS;
 - Drainage Catchment Plan 21-063/523;
 - Tree Survey and AIA dated February 2021;
 - Lighting Assessment prepared by Dwd dated 15 June 2021;
 - Flood Risk Assessment dated August 2021;
 - Parking Court and Open Space Management Plan;
 - Transport Statement dated 2021; and
 - Energy Statement dated 22nd October 2021
3. The development hereby approved shall be implemented in accordance with the waste strategy, Bin Collection Strategy and the SWMP document as received by the local planning authority on 2 February 2023.
4. No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - Parking of vehicle of site operatives and visitors (including measures taken to ensure satisfactory access and movement for existing occupiers of neighbouring properties during construction);
 - Advisory routes for construction traffic;
 - Any temporary access to the site;
 - Locations for loading/unloading and storage of plant, waste and construction materials;
 - Method of preventing mud and dust being carried onto the highway;
 - Arrangements for turning vehicles;
 - Arrangements to receive abnormal loads or unusually large vehicles;

- Highway Condition survey; and
- Methods of communicating the Construction Management Plan to staff, visitors and neighbouring residents and businesses.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

5. No development shall take place, including any works of demolition, site clearance, materials delivery or erection of site buildings, until the erection of tree protection measures of any retained tree are undertaken in accordance with the approved details specified in the tree protection plan Drawing No D17270- before any development. The approved tree protection measures shall remain in place until the completion of development or unless otherwise agreed in writing with the local planning authority. Excavations of any kind, alterations in soil levels, storage of any materials, soil, equipment, fuel, machinery or plant, site compounds, latrines, vehicle parking and delivery areas, fires and any other activities liable to be harmful to trees and hedgerows are prohibited within any area fenced, unless agreed in writing with the local planning authority.
6. No development above floor plate level shall take place until samples or a precise specification of all external facing materials, including hard landscaping, have been submitted to and approved by the local planning authority in writing. The relevant works shall be carried out in accordance with the approved sample details.
7. No dwelling hereby permitted shall be occupied until the surface water and foul water drainage scheme for the site shall have been completed in accordance with the submitted details. The sustainable drainage system shall be managed and maintained thereafter in accordance with the agreed management and maintenance plan.
8. No dwelling hereby permitted shall be occupied until bird nesting sites/boxes and hedgehog fencing has been installed in accordance with details, including a plan showing locations, height and orientation of the boxes and fencing, that have been submitted to and approved by the local planning authority in writing.
9. No dwelling hereby permitted shall be occupied until a noise assessment report relating to any potential noise arising from the adjacent pumping station has been submitted to and approved in writing by the local planning authority. The report shall include any required noise attenuation measures and a timetable for their implementation. All measurements shall be made in accordance with the methodology of BS4142:2014+A1:2019 Methods for rating and assessing industrial and commercial sound.
10. No dwelling hereby permitted shall be occupied until the access, parking and turning facilities have been implemented as detailed on approved drawing Site Layout Plan D20 Rev N. These areas as detailed on the approved drawing Site Layout Plan D20 Rev N, shall thereafter be kept available at all times for the access, parking and turning of vehicles.
11. No dwelling hereby permitted shall be occupied until a dropped kerb tactile crossing has been provided at the site access junction and made available for public use.

12. No dwelling hereby permitted shall be occupied until a residential welcome pack promoting sustainable forms of access to the development has been submitted to and approved in writing by the local planning authority. The approved pack shall be provided to each resident at the point of the first occupation of their dwelling.
13. Demolition or construction works, including the receipt or despatching of deliveries during the construction or demolition phase, shall take place only between 0800 hours and 1800 hours on Monday – Friday inclusive, 0800 hours and 1300 hours on Saturday, and shall not take place at any time on Sundays or on Bank or Public Holidays.
14. Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.
15. All planting comprised in the approved details of tree/hedgerow planting shall be carried out in the first planting season following the occupation of any building or the completion of the development, whichever is the sooner; and any trees or hedgerows which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written consent to any variation. If any trees or hedgerows fail more than once they shall continue to be replaced on an annual basis until the end of the 5 year period.
16. No external lighting/floodlighting is to be installed on the site prior to details having been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.



Costs Decision

Site visit made on 2 November 2023

by **C Rafferty LLB (Hons), Solicitor**

an Inspector appointed by the Secretary of State

Decision date: 31 January 2024

Costs application in relation to APP/G1630/W/23/3325421 Land off Ruby Avenue, Bishops Cleeve GL52 7ZN

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
 - The application is made by Rooftop Housing Association Ltd for a full award of costs against Tewkesbury Borough Council.
 - The appeal was against the refusal of planning permission for proposed residential development to erect 22 units with associated car parking; development 100% affordable
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Decision

1. The application for an award of costs is refused.

Reasons

2. Planning Practice Guidance (PPG) advises that, irrespective of the outcome of the appeal, costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary expense in the appeal process. This application for costs is based on the alleged unreasonable behaviour of the Council and wasted expense for the applicant.
3. Firstly, the applicant contends that it was unreasonable for planning permission to have been refused contrary to the officer recommendation. Members of planning committees are entitled to make decisions that are contrary to the officer recommendations that they receive. The applicant's case is that Council officers took advice from their professional consultees, which the Committee acted against without sufficient evidence.
4. However, both the decision notice and the Council's Statement of Case outline and expand upon the reasons that led to the refusal of the application due to specific circumstances relating to the site and proposal, with the decision notice providing clear references to local and national policy to justify the decision taken for each of the reasons. While it can be seen from my decision that I did not agree with the Council's conclusions on the matters, I nevertheless find that they adequately outlined the reasoning for each.
5. I acknowledge the Financial Viability Assessment submitted during the application, the conclusions of the Council's independent assessor in this regard, and the ultimate decision of the Council to withdraw this reason for refusal. Nevertheless, it remains that the Committee is entitled to form an opinion contrary to the Officer recommendation and, even if I were to find that this was unreasonable in this instance, it remains that the proposal would still have been refused for other reasons such that the appeal would still have proceeded.

6. Secondly, the applicant contends that the Council acted unreasonably in its late concession regarding reasons for refusal 1 and 2, being whether the proposal would comply with paragraph 97 of the National Planning Policy Framework insofar as it relates to services and facilities; and whether it would provide affordable housing in a seamless and integrated manner.
7. On the basis of the evidence before me, approximately one month after the publication of another appeal decision in the area on 11 September 2023, the Council conceded that it could not demonstrate the required level of housing land supply and that, in accordance with the Framework, there were no adverse impacts of granting permission for the proposal that would significantly and demonstrably outweigh the benefits. This timescale does not appear to be unreasonable, given that the Council would have had to have internal discussions on the matter.
8. I acknowledge the reference of the appellant to the Statement of Common Ground dated August 2023, which they state showed that the Council had conceded the point much earlier, thereby creating a greater delay. However, this is not my reading of that Statement. The Council, in that statement, is clear that it believes a five year housing land supply can be demonstrated using the standard method, and maintains this approach. However, the Council acknowledges that on other schemes Inspectors have not accepted this approach, and have found that no such housing land supply can be demonstrated. The Council states that if the same conclusion is reached in this case, then it would be content to accept that the titled balance is engaged. The Council does not explicitly accept a lack of 5 year housing land supply in this case, or indeed that there are no adverse impacts of granting permission for the proposal that would significantly and demonstrably outweigh the benefits, until after the publication of the September 2023 appeal decision.
9. Finally, the appellant contends that the appeal was generally undefendable as a whole from the Council's perspective. In particular, they point to the lack of development policy plans cited in the first reason for refusal, relating to services and facilities. However, the Council makes clear reference in this reason for refusal to the Framework, which is a material consideration. I note that the relevant reserved matters application in respect of the Cleavelands permission was not submitted within the required timeframe, such that its designation of the site as a 'High Street' does not carry any weight and that under the circumstances no marketing campaign for the use of the site was required. Nevertheless, it remains that another implementable planning permission does remain at the site. This too is a material consideration. While I did not agree with the Council's conclusion regarding the impact of the proposal on services and facilities, it remains that material considerations existed that justified the Council taking the stance it did, such that the lack of specific local plan policy in this regard does not, in itself, lead to the approach taken to be unreasonable.
10. Overall, I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense as described in the Planning Practice Guidance has not been demonstrated, and an award of costs is not justified.

C Rafferty

INSPECTOR