



Appeal Decision

Hearing held on 22 March 2023

Site visit made on 22 March 2023

by R Sabu BA(Hons), MA, BArch, PgDip, RIBA, ARB

an Inspector appointed by the Secretary of State

Decision date: 27th April 2023

Appeal Ref: APP/B1605/W/22/3310113

**Lilley Brook House (Land Adjacent Brecon House), Charlton Hill,
Cheltenham GL53 9NE**

- 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 Mr & Mrs Huw & Susan Evans against the decision of Cheltenham Borough Council.
 - The application Ref 21/02755/FUL, dated 10 December 2021, was refused by notice dated 21 June 2022.
 - The development proposed is construction of a dwelling, estate management building, and associated landscaping, ecology enhancements, access, parking and garaging.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. I have omitted the reference to paragraph 80 and siting of the proposal in the description above as they are not acts of development.

Main Issues

3. The main issues are:
 - the effect of the proposed development on the Cotswold Beechwoods Special Area of Conservation (SAC);
 - whether the proposal would accord with the Council's development plan strategy for housing;
 - the effect of the proposed development on the Cotswolds Area of Outstanding Natural Beauty (AONB); and
 - whether the proposal would meet the policy exception for new dwellings in the countryside as set out in paragraph 80e of the National Planning Policy Framework (Framework).

Reasons

Cotswold Beechwoods SAC

4. The scheme proposes a dwelling on a site that lies approximately 6km from the Cotswold Beechwoods SAC. The Council confirmed during the hearing that the site lies within the Zone of Influence (ZoI) of this designated site.

5. I note Natural England's (NE) response to consultation which stated that since the proposal will result in a net increase in residential accommodation, impacts to the SAC may result from increased recreational disturbance. NE also stated that subject to the appropriate financial contribution being secured, it is satisfied that the proposal will mitigate against the potential recreational impacts of the development on the site. In addition, the Council has measures in place to manage potential impacts through the agreed strategic solution which NE considers to be ecologically sound.
6. However, the Council consider that an Appropriate Assessment is unnecessary as the development is a single dwelling so additional recreational disturbance on the SAC would be negligible in their view.
7. There is limited evidence before me regarding the SAC and there is little substantial evidence before me regarding the effect of the proposal in combination with other development. The parties discussed during the hearing that given the size of the site, future occupiers would have the opportunity to use the site for recreational activities such as walking, rather than travel to the SAC. However, since the site lies within the ZoI, recreational trips to the SAC by future occupiers cannot be discounted altogether.
8. Therefore, although the proposal is for a single dwelling, the effect of recreational disturbance in combination with other development, is unclear. The Planning Practice Guidance states that a significant effect should be considered likely if it cannot be excluded on the basis of objective information and it might undermine a site's conservation objectives. A risk or a possibility of such an effect is enough to warrant the need for an appropriate assessment.
9. On this basis, I consider that in combination with other development, the proposed development would result in likely significant effects on the SAC. An Appropriate Assessment is therefore necessary.

Appropriate Assessment

10. The qualifying features of the SAC include Asperulo-Fagetum beech forests and semi-natural dry grasslands.
11. There is no mechanism before me either to secure appropriate financial contribution towards mitigation, or to require compliance with the agreed strategic solution. The Appellant suggested during the hearing that a condition to require a homeowner pack to be provided to future occupiers could be attached to the permission. However, there is no evidence to demonstrate that this would provide adequate mitigation against the adverse effects of recreational disturbance on the SAC.
12. Consequently, the proposed development would result in adverse effects on the integrity of the Cotswold Beechwoods SAC. Therefore, it would conflict with the National Planning Policy Framework (Framework) and the aims of The Conservation of Habitats and Species Regulations 2017.

Development strategy for housing

13. Policy SD10 of the Gloucester, Cheltenham and Tewkesbury Joint Core Strategy 2011-2031 Adopted 11th December 2017 (JCS) sets out the strategy for housing in the district and directs residential development to allocated sites and settlements. It also states, among other things, that housing development

on other sites will only be permitted where there are other specific exceptions/circumstances defined in the district or neighbourhood plans. No relevant exceptions or circumstances defined in the development plan are before me or have been suggested by the parties.

14. Consequently, the proposal would not accord with the Council's development plan strategy for housing as it would conflict with JCS Policy SD10.
15. Circumstances where the development of isolated homes in the countryside may be acceptable are set out in guidance within national policy and is suggested in the explanatory text to JCS Policy SD10. Given the tension between the wording of the Policy and the explanatory text, the conflict with JCS Policy SD10 in and of itself is not a reason for refusing the development.

AONB

16. The site lies within the Cotswolds AONB, the special qualities of which include the Cotswold escarpment, including views from and to the AONB; river valleys; internationally important flower-rich grasslands, particularly limestone grasslands; internationally important ancient broadleaved woodland, particularly along the crest of the escarpment; the tranquillity of the area, away from major sources of inappropriate noise, development, visual clutter and pollution and extensive dark sky areas.
17. The site is part of the Cotswolds National Landscape Escarpment landscape (also known as Cotswold AONB). It is located within the Landscape Character Type: Wooded Pasture Slopes and Landscape Character Area: Timbercombe Wooded Pasture Slopes. In addition, the site lies in a transitional area between the lower vale, with moderate sized enclosed fields, and the escarpment curving around the site to the south with large unenclosed fields on the upper slopes.
18. As such the area surrounding the site is characterised by the presence of the steep sided slopes of the escarpment and rolling landform, as well as an open medium scale pastoral landscape with numerous woodland areas. This is in keeping with the special qualities of the wider AONB.
19. The urban area of Cheltenham lies to the north of the site and the A435, from which the site is accessed, is a primary route to the city. As such, the tranquil nature of the site is diminished by vehicular movements along the road.
20. The site is set within a steep sided valley and comprises a grass field with some trees and hedgerow along the western boundary that partially screen views and noise from the highway. An area of woodland known as The Dingle lies partially within and to the east of the site, screening wider views of the site from the east. A brook, known as Lilley Brook, defines the eastern boundary of the site and is located within The Dingle. In terms of topography, there is a hollow in the sloping land in the northern part of the site.
21. The undeveloped nature of the site results in a pleasant, open and green character. However, given that trees, vegetation and the brook lie at the periphery of the site, with the majority of the land comprising semi-improved grassland, the site is in keeping with the special qualities of the AONB.

22. The proposed dwelling would be set within the hollow in the sloping land near the northern part of the site. The top of the building would be set at a ground level near the top of the hollow.
23. As such, views of the dwelling from the highway would be mostly screened by the forms of the land on the site, as well as by trees and vegetation along the highway. As I observed during my site visit and having spent time in the wider area, there are no obvious notable views of the hollow from long-range views in a number of directions including from public footpaths. This is due to the topography of the hollow where the building is proposed, and also due to the wider topography of rolling landforms and intervening areas of woodland.
24. While there maybe views of the proposal in some long views, including from public footpaths such as the Cotswolds Way, given the position of the dwelling within the hollow, and that there are sporadic dwellings in the wider area, the scheme would not appear out of harmony with the surrounding AONB in this respect.
25. Within the site, the proposed dwelling would be primarily viewed from the north, east and south in immediate views when approaching the building. The upper level of the building, the 'Prospect' level, would be the most prominent in these views.
26. The form of the Prospect level would follow the curved line of the contours of the upper lip of the hollow and would be partially submerged in the land. As such it would appear to project from the landscape while echoing the landform of the hollow within which it would be set.
27. The external walls would be glazed with timber fins set out with varying spacing. The timber would be Sweet Chestnut that would be likely to weather over time. However, given the siting of the Prospect level set within the hollow, the weathering of the timber would assist the building to blend into the surrounding landscape.
28. The approach from the highway to the ground level of the dwelling, the 'Arrival' level, would be via a track that would follow the contours of the sloping land. As a result, the dwelling would be seen primarily in close views. The floor plan of this level would be partially circular, appearing as a centre point to the two curves of the upper and lower floors. The remaining part would be under the prospect level, largely hidden from view given the contours of the surrounding land.
29. The lower level of the dwelling, the 'Refuge' level, would be set within the ground, with the external wall facing The Dingle following a curved line that would roughly mirror the curve of the Prospect level. The roof of this level would be flat and grassed, providing a defined external amenity space for future occupiers while echoing the grassland of the surrounding landscape. The external wall would be clad in Grange Hill Cream Chopped Cotswold stone that would reflect the local geology and appear in keeping with the surrounding landscape and use of stone walls in the wider area.
30. Accordingly, the Arrival and Refuge levels of the proposed dwelling would appear in harmony with the surrounding river valley. The Prospect level would be the most prominent part of the dwelling in immediate views. However, its position within the hollow and its curved form following the contours of the land

would result in a building that would project from the hollow, following its forms and resulting in a sensitive addition to the local landscape.

31. As I observed during my site visit, the enclosed nature of the hollow provides a tranquillity from within that is distinct from the upper parts of the site near the road. Therefore, given the siting and form of the dwelling within the hollow, any noise and visual clutter that may result from the introduction of a dwelling to the site would be largely mitigated by the enclosed nature of the hollow. As such, the dwelling would preserve the tranquillity of the AONB.
32. The access to the site from the highway would be via a gate that would be in keeping with other gates in the area and would be set back from the road. Given the largely screened nature of the proposed dwelling, it is unlikely that the proposal would result in vehicles and people congregating on the highway. Accordingly, this element of the scheme would not harm the character and appearance of the area.
33. The proposed landscape strategy includes protecting and enhancing existing hedgerows and the Lilley Brook watercourse and creating new and diverse grassland habitats. These measures would enhance the scenic beauty of the site and improve the ecology of the locality.
34. With five bedrooms, spacious living, dining and kitchen areas as well as storerooms and entrance hall, the building would not be small in scale. However, its design including siting and orientation within the hollow and form following the contours of the land as well as spaces set in the ground, would result in a building that would appear in harmony with the surrounding landscape. Moreover, the size of the building would be comparable with other dwellings in the wider area. In addition, being on a large site, and being contained within the extents of the hollow, the scheme would appear limited and would preserve the spacious open character of the site and surrounding AONB.
35. The Estate Management Building would be small in scale and would be partially set within the ground in the northern part of the site. It would have a traditional form that would have an agricultural character commensurate with its function in managing the nearby woodland as well as the rural character of the surrounding landscape.
36. I note concerns regarding the proposed use of concrete and sustainability. However, given the evidence regarding embodied carbon, this matter has not altered my findings on this main issue.
37. I have had regard to paragraph 176 of the Framework which states that great weight should be given to conserving and enhancing 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 these issues. It goes on to say that the scale and extent of development within all these designated areas should be limited.
38. For the foregoing reasons, the proposed development would conserve and enhance the landscape, scenic beauty and special qualities of the AONB. Therefore, it would not conflict with JCS Policy SD7 which requires, among other things, all proposals within the Cotswolds AONB to conserve and, where appropriate, enhance its landscape, scenic beauty, and other special qualities.

The scheme would also not conflict with the Framework in this particular respect.

Paragraph 80e of the Framework

39. Paragraph 80 of the Framework restricts the development of isolated homes in the countryside unless one or more of a number of circumstances apply. The circumstance relevant to this appeal is part e) of the paragraph: the design is of exceptional quality, in that it:

- is truly outstanding, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas; and
- would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area.

Truly outstanding and reflecting the highest standards in architecture.

40. As discussed above, the design of the proposed dwelling has been landscape led, integrating the form of the land, in particular the contours of the hollow within the site. The Prospect level would project from within the hollow in a dynamic but sensitive way that responds to the landscape. The arrival level would create an entrance to the building that would flow from the ground levels of the sloping site and provide a visual fulcrum to the upper and lower levels. The Refuge level would be largely buried in the ground, sitting subtly within the hollow. It would create an amenity space on the roof that would be self-contained while visually integrating with the surrounding grassland.

41. Given the above I find the design of the dwelling to be truly outstanding and reflecting the highest standards in architecture.

Help to raise standards of design more generally in rural areas.

42. There would be limited views of the dwelling from public footpaths. However, given the outstanding nature of the proposal, the spread of news of such designs and glimpses of the buildings would be sufficient to inspire others to raise standards of designs. As such, the proposal would help to raise standards of design more generally in rural areas.

Significantly enhance its immediate setting.

43. The landscape proposals would enhance the visual and ecological qualities of the site and would benefit the character and appearance of the immediate setting. The dwelling's dynamic form and sensitive location as well as use of materials would significantly enhance its immediate setting.

Be sensitive to the defining characteristics of the local area

44. Given my findings on the effect of the building on the Cotswolds AONB, the proposal would be sensitive to the defining characteristics of the local area.

45. In summary, the proposal would be truly outstanding and be of the highest architectural standard. The scheme would help to raise the standards of design more generally in rural areas, would significantly enhance its immediate setting and would be sensitive to the defining characteristics of the local area.

46. Consequently, the proposal would meet the policy exception for new dwellings in the countryside as set out in paragraph 80 of the Framework.

Other Matters

47. Paragraph 182 of the Framework states that the presumption in favour of sustainable development does not apply where the plan or project is likely to have a significant effect on a habitats site (either alone or in combination with other plans or projects), unless an appropriate assessment has concluded that the plan or project will not adversely affect the integrity of the habitats site.
48. The policies in the Framework relating to designated sites provide a clear reason for refusing the development proposed. Therefore, even though the Council cannot demonstrate a 5-year supply of deliverable housing sites, the presumption in favour of granting planning permission in those circumstances found in paragraph 11(d) of the Framework does not apply.

Conclusion

49. For the reasons given above, the proposed development would result in an adverse effect on the integrity of the Cotswold Beechwoods SAC. It would therefore conflict with the Framework and the aims of The Conservation of Habitats and Species Regulations 2017. This is a material consideration which indicates that the appeal should be dismissed.

R Sabu

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

David Jones	Planning Agent	Evans Jones Ltd
Rickard Hawkes	Architect	Hawkes Architecture Ltd
Michael Davies	Landscape Architect	Davies Landscape Architects
Peter Goatley KC	Counsel	

FOR THE LOCAL PLANNING AUTHORITY:

Lucy White	Principal Planning Officer	Cheltenham Borough Council
Ben Warren	Senior Planning Officer	Cheltenham Borough Council
Garth Barnes	Planning Committee	Cheltenham Borough Council
Anthony Lewis	Cheltenham Architects Panel	

DOCUMENTS

2 Visual images of the proposal
Additional conditions A and B
Drawing 3201 Domestic Use Area