

20/01069/OUT: Oakley Farm

Policy considerations in relation to an outline application for development comprising of up to 250 residential dwellings including provision of associated infrastructure.

The site

The application site is situated to the east of Cheltenham town centre on the lower slopes of the Cotswold Scarp at Oakley and is outside of the Principal Urban Area (PUA) and it lies within the Cotswolds Area of Outstanding Natural Beauty (AONB).

Policy Framework

Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning decisions should be taken in accordance with the relevant adopted Development Plan unless material considerations dictate otherwise. Therefore, in determining this application, the following must be considered:

The adopted development plan for the area:

- The Gloucester, Cheltenham and Tewkesbury Joint Core Strategy (December 2017)
- The Cheltenham Plan (July 2020)
- Relevant saved policies of the Cheltenham Borough Local Plan Second Review 2006

Relevant material considerations, which include:

- The National Planning Policy Framework (NPPF)
- National Planning Practice Guidance (nPPG)

Policy context

NPPF para. 11(d) provides that, where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, the presumption in favour of sustainable development requires permission to be granted unless either:

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed [6]; or
- ii. 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.

Footnote [6] sets out the relevant policies in the NPPF, including policies “relating to ... land designated as ... an Area of Outstanding Natural Beauty”.

In [Monkhill Ltd v SSHCLG \[2019\] EWHC 1993 \(Admin\)](#) Justice Holgate provides a useful 15-stage summary of the meaning and effect of NPPF para. 11. The following excerpts are of particular relevance:

5) Where there are relevant development plan policies, but the most important for determining the application are out-of-date, planning permission should be granted (subject to section 38(6)) *unless either limb (i) or limb (ii) is satisfied*;

8) The object of expressing limbs (i) and (ii) as two alternative means by which the presumption in favour of granting permission is overcome (or disapplied) is that the tilted balance in limb (ii) may not be relied upon to support the grant of permission where a proposal should be refused permission by the application of one or more "Footnote 6" policies. In this way paragraph 11(d) prioritises the application of "Footnote 6" policies for the protection of the relevant "areas or assets of particular importance";

9) It follows that where limb (i) is engaged, it should generally be applied first before going on to consider whether limb (ii) should be applied;

10) Under limb (i) the test is whether the *application* of one or more "Footnote 6 policies" provides a clear reason for refusing planning permission. The mere fact that such a policy is *engaged* is insufficient to satisfy limb (i). Whether or not limb (i) is met depends upon the outcome of *applying* the relevant "Footnote 6" policies

Cheltenham Borough Council cannot currently demonstrate a five year housing land supply so the policies which are most important for determining the application are out-of-date. Limb (i) should then be applied. The guidance above indicates that just because there is a "Footnote 6 policy" (e.g. AONB) it does not follow that the application should be refused. In this case the relevant paragraph to look at is 172 which says:

"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...Planning permission should be refused for major development other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest."

Therefore the first step in considering this application is determining whether exceptional circumstances exist which outweigh the great weight attached to conserving and enhancing the AONB. This consideration should take into account whether the development is in the public interest. The contribution the site will make towards meeting housing land supply requirements is significant but cannot on its own be an exceptional circumstance.

If this test is passed then limb (ii) will need to be considered. This is a 'tilted balance' in favour of sustainable development. This is a wider balancing exercise which should take into account all relevant national and local policies.

JCS Policy SD7 states that:

"All development proposals in or within the setting of the Cotswolds AONB will be required to conserve and, where appropriate, enhance its landscape, scenic beauty, wildlife, cultural heritage and other special qualities. Proposals will be required to be consistent with the policies set out in the Cotswolds AONB Management Plan."

The Cotswolds AONB Management Plan 2018-23

Policy CE1 of the Cotswolds AONB Management Plan requires:

1. Proposals that are likely to impact on, or create change in, the landscape of the Cotswolds AONB, should have regard to, be compatible with and reinforce the landscape character of the location, as described by the Cotswolds Conservation Board's Landscape Character Assessment and Landscape Strategy and Guidelines.
2. Proposals that are likely to impact on, or create change in, the landscape of the Cotswolds AONB, should have regard to the scenic quality of the location and its setting and ensure that views – including those into and out of the AONB – and visual amenity are conserved and enhanced.

Policy CE2 says:

1. Proposals that are likely to impact on the local distinctiveness of the Cotswolds AONB should have regard to, be compatible with and reinforce this local distinctiveness. This should include:
 - being compatible with the Cotswolds Conservation Board's Landscape Character Assessment, Landscape Strategy and Guidelines and Local Distinctiveness and Landscape Change;
 - being designed and, where relevant, landscaped to respect local settlement patterns, building styles, scale and materials;
 - using an appropriate colour of limestone to reflect local distinctiveness.
2. Innovative designs – which are informed by local distinctiveness, character and scale – should be welcomed.

The Council undertook a review of AONB to support the Cheltenham Plan. This review is published in the Landscape Character, Sensitivity and Capacity Assessment of the Cotswold AONB within Cheltenham Borough (April 2015 / updated May 2016). The application site is situated within site reference LCA 7.1 (Oakley Farm Pasture Slopes).

The report concludes that the overall landscape constraint for the character area is major. It considers the site to have a high visual sensitivity and the landscape value to be high. The resulting overall landscape capacity is 'low'.

This report and its findings are a material consideration in the determination of the proposal. It provides a useful starting point in which to establish whether the development compromises the principles of conserving the landscape and scenic beauty of the AONB.

It is also interesting to note that a section at the far west of the site was not originally included in the AONB designation. It was added in 1990 when boundary amendments took place. This suggests that the overall landscape sensitivity of the site has increased over the years.

Conclusions

It is acknowledged that the proposal would have the effect of increasing the supply of housing land in Cheltenham, but this needs to be weighed against other material considerations, principally the effect of development on the AONB.

The main policy consideration is the need to balance the positive contribution this proposal could make to Cheltenham's housing land supply with the need to give great weight to conserving the Cotswold AONB, which has the highest status of protection in relation to landscape and scenic beauty. Any adverse impact on the AONB as a result of the proposal, which cannot be adequately mitigated, should weigh greatly in the proposal's assessment.

The adopted development plan directs that development should not harm the landscape's natural beauty and JCS Policy SD6 requires that proposals should protect and where appropriate enhance its landscape. Therefore, decision-taker must be satisfied that the application fulfils this.