
Appeal Decision

Site visit made on 22 August 2017

by **David Richards BSocSci DipTP MRTPI**

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

Decision date: 05 October 2017

Appeal Ref: APP/61630/W/17/3171926

Land off Kyderminster Road, Winchcombe, GL54 SYP

- 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 Tata Steel UK Ltd against the decision of Tewkesbury Borough Council.
 - The application Ref. 16/00481/OUT, dated 29 April 2016, was refused by notice dated 20 December 2016.
 - The development proposed *is* the erection of up to 35 dwellings, vehicular access from Clarendon Road and Whitmore Road, together with public open space and other associated infrastructure and engineering works.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is the effect of the proposed development on the Cotswolds Area of Outstanding Natural Beauty (AONB).

Reasons

Policy

3. The development plan for the area includes the saved policies of the Tewkesbury Borough Local Plan to 2011(LP) and the Winchcombe and Sudeley Neighbourhood Plan 2011 - 2031 (**NP**).
4. The appeal site lies beyond the currently defined settlement boundary for Winchcombe and therefore does not comply with saved Policy HOU4, which restricts new housing to limited purposes relating to affordable housing and rural activities. I have considered the weight to be given to the LP policies in the relevant sections of the decision below, in the light of the advice in paragraph 215 of the Framework.
5. The NP was formally adopted on 24 January 2017. The Plan does not propose to allocate land for housing but includes policies relevant to applications for new housing development. Policy 1.1 states that development should respect local character and must protect and enhance the Cotswolds **AONB**. Policy 3.1 supports residential development on infill and redevelopment sites, provided that they are within the built up areas as shown within the proposals map. Policy 3.2 is concerned with meeting total needs for new homes for those with

modest incomes. Policy 4.5 seeks the provision of new allotments and policy 5.1 provides that the design of new dwellings.

6. The three authorities of Cheltenham Borough, Gloucester City and Tewkesbury Borough have been jointly preparing a Joint Core Strategy, which covers the period 2011 to 2031. The JCS was submitted for examination in 2014, and the examination is in progress, having commenced in 2015. In May 2016 the Inspector published her Interim Report, including recommendations on the objectively assessed need for housing (OAN). In January and February 2017 each of the three Councils resolved to approve proposed main modifications for public consultation which took place from February to April 2017. Further examination hearing sessions were due to take place in July 2017. Policy SD7 seeks to protect landscape character for its own intrinsic beauty and for its benefits to economic, environmental and social well-being. Policy 5D8 requires all development proposals within the setting of the Cotswold AONB to conserve, and where appropriate enhance, its landscape, scenic beauty and other special qualities.
7. The Council has also commenced preparation of a replacement local plan, which amongst other things will make site allocations to meet needs identified in the JCS, but this is at an early stage and carries little weight at present.

Effect on the Cotswold AONB

8. The proposal is for the erection of up to 35 dwellings (40% of which would be affordable) together with public open space and associated infrastructure and engineering works. The application was made in outline and all matters are reserved for future consideration except for access which would be from Clarendon Road and Whitmore Road. Although in outline, the Design and Access Statement states that the development would be limited to two storeys, with some opportunity to use roof space by the provision of dormers. An illustrative master plan also accompanies the application, together with indicative site sections.
9. The site consists of two agricultural fields on the northern edge of Winchcombe Town, most recently used for grazing. Immediately to the east lies the residential development of Kyderminster Road. To the south there is a private access track (Cider Mill Lane) which leads to a working farm adjacent to the western boundary of the site. To the north there is an agricultural field/pasture which has an extant planning permission for change of use to provide a cemetery. This land is in the ownership of Winchcombe Town Council, together with land to the west which has been identified in the NP for allotments. A relatively recent housing development known as Mount **View** drive adjoins the north-east corner of the site.
10. The site is set on gently rising ground above housing on Kyderminster, Clarendon and Whitmore Roads with the slope becoming more pronounced in the western portion of the site, beyond which the land rises more steeply as it climbs Langley Hill. The two fields are bisected by dense and well established tree/hedgerow planting, which also characterises the northern, southern and western site boundaries.
11. The site lies adjacent to but outside of the residential development boundary for Winchcombe, and wholly within the defined Cotswolds Area of Outstanding Natural Beauty (AONB).

12. There are no public rights of way within or passing close to the site, although there are a number of rights of way, including national trails and long distance paths within the locality, from which there are elevated views across the wider landscape and Winchcombe.
13. A core planning principle of the Framework is that the planning system should recognise the intrinsic character and beauty of the countryside. Section 11 of the Framework advises that the planning system should contribute to and enhance the local environment by protecting and enhancing valued landscapes, amongst other considerations. Areas of Outstanding Natural Beauty have the highest status of protection in relation to landscape and scenic beauty. Paragraph 116 provides that planning permission should be refused for major developments in an AONB, except in exceptional circumstances and when it can be demonstrated that they are in the public interest.
14. Policy SD8 of the submission version of the JCS requires development proposals within the setting of the Cotswolds **AONB** to conserve, and where appropriate, enhance its landscape and scenic beauty and other special qualities. Policy 1.1 of the **WSNP** requires that development within the area should protect and enhance the Cotswolds **AONB** and wider landscape and should conserve, enhance and increase tree cover and woodland.
15. The site is categorised as lying within the undulating lower escarpment slopes of Langley HUI Escarpment Outlier, as defined in the Cotswold Conservation Board's landscape Character assessment.
16. The site lies on the lower slopes of Langley Hill, immediately adjacent to the west of existing development, and was considered by the Council's Landscape Consultant to be typical of the escarpment in terms of field pattern, boundaries, tree cover and topography. It has been assessed in a number of landscape and Visual Sensitivity Studies prepared by Tewkesbury Borough Council and Winchcombe Town Council. In summary the studies conclude that the effect upon landscape character and upon local landscape features would be 'low adverse' but that any development extending up the slopes beyond the existing settlement edge (above the 115 metre contour) might give the impression of settlement sprawling up the slopes). Opportunities for mitigation are identified, including by aligning development along the settlement edge to respond to topography and by occupying the lowest ground to deliver a defensible 'feathered' settlement edge through the provision of open space and planting.
17. It is important to note that these studies related to a larger area of land 'Parcel Win-02', which includes land to the north of the appeal site where housing development has been permitted, as well as areas of land to the south extending along the western edge of the settlement. The current appeal site comprises the two field parcels immediately adjacent to the settlement edge west of Clendon and Whitmore Road.
18. The Appellant's Landscape and Visual Appraisal(LVA) for the development concluded as follows:
 - The development would cause a minimal localised landscape and visual impact, would be successfully integrated into the settlement pattern of Winchcombe, would not cause harm to the landscape character, AONB or

visual amenity of the area and would fulfil the policy aspirations of the Tewkesbury Local Plan;

- The proposal would not be introducing any incongruent elements into the landscape, and will not impact to or from the Cotswold escarpment at Salter's Hill, or the outlier at Langley Hill;
 - Development would be contained at the base of Langley Hill, within the extents of existing development on the western edge of Winchcombe, separated from the sloping hillside by retained and enhanced boundary vegetation; and
 - The proposals will therefore retain the special quality of views to and from the Cotswold escarpment.
 - The findings of the LVA are consistent with those identified within the Landscape Sensitivity Studies that form the evidence base to the emerging JCS and WSNP. The Council's studies identified substantially larger areas to the west of Winchcombe, within which the appeal site is located, as being of low landscape sensitivity.
19. For the appeal, the Appellant's have prepared a 'Winchcombe and Cotswold AONB Settlement Edge Study', which includes a set of viewpoints and wireline photomontages for key representative viewpoints. Photomontage 1 demonstrates how the proposed development would sit behind the Grett.on Road development, set below the rising form of Langley Hill. The development would be largely hidden behind intervening development, with only the roofs of dwellings likely to be visible. Photomontages 2, 7 and 10 illustrate views from Slater's Hill to the east, showing how the development would be seen within the extent of adjacent development and below the rising slopes at the base of Langley Hill. Photomontages 11 and 12 show how the proposed development would be situated on the flatter land below the break of slope at the base of Langley Hill, and relate to the settlement edge.
20. The landscape impacts of the development were assessed by the Council's landscape consultant and fed into the preparation of the committee report and positive recommendation for this application. He advised that the proposal adopted the 115m contour as the parameter limiting the western extent of built form on the site. In view of this it was considered that the development shows some restraint in the extent to which it would be seen to rise up the slopes and would extend no further higher than the most elevated part of the western settlement edge. The consultant accepted that the proposed development could deliver a softer 'feathered' edge to the settlement where the existing edge is somewhat unsympathetic. It was further considered that, notwithstanding its location in the AONB, direct views into and across the site from publicly accessible vantages are limited. Where it is visible, the site appears foreshortened and development could appear well integrated into the existing settlement pattern. Local opportunities to soften the settlement edge were identified. The overall conclusion was that whilst the development would represent loss of open countryside within the AONB, any harm to landscape character or to views that might arise would be local and limited.
21. The Council's own landscape officer also commented that 'there would not be a landscape objection to the proposed development. Although there are partial views from the Winchcombe Way on the upper slopes of Langley Hill, existing

- planting, intervening vegetation, topography and the site's close juxtaposition adjacent to the settlement edge, do not cause unacceptable landscape and visual impacts to the setting.
22. With regard to design and layout, officers concluded that the proposed development could be appropriately and sensitively accommodated on the site without harm to the character of the existing settlement and AONB landscape.
23. I note that the Council also concluded that in the context of Winchcombe Town, with a population of 4500, and taking the AONB as a whole, that a development of up to 35 dwellings would not constitute major development, and have no reason to disagree with this assessment.
24. In view of the extent of agreement between the landscape assessors on both sides, I accept that the degree of harm to the landscape is correctly assessed as 'low adverse'. Built development would occupy the lower part of the slope, below the critical 115 m contour and would avoid the more elevated western portion of the site. The development would include open space and landscape planting which would provide for a 'feathered' edge to development in contrast with the rather abrupt edge currently displayed by existing development. There would be limited impact on views from public rights of way, including the long distance trails and identified local walks, due to the topography of the area, and the absence of public rights of way on the lower slopes of Langley Hill immediately adjacent to the site.
25. However, the Appellant's LVA also acknowledged that 'upon completion of the proposals, views of the site will change from open views across fields managed as grassland/pasture, bounded by mature vegetation, and with views across the southern field of the site towards the slopes of Langley Hill as a backdrop and wooded skyline. These views will be replaced by those of housing, set beyond a strip of open space along the eastern site boundary and areas of open space and associated planting. Although the setting back of development from the site boundary will allow for the retention of a degree of openness and limit overlooking, the development will result in the loss of open views across the site and those towards the slopes of Langley Hill as a backdrop. This would result in a moderate adverse magnitude of change for these sensitive receptors.' Notwithstanding the opportunity within in the site to incorporate views through the scheme between buildings, I do not consider that this would provide meaningful mitigation for the adverse effects identified.
26. In reaching his assessment that the site was of low landscape sensitivity, the Council's consultant acknowledged that the 'judgement about landscape sensitivity is driven to a large extent by the prominence and nature of the existing settlement edge'. Despite this, he found that the landscape remained representative of the typical character. To my mind, this would be applicable in principle to many sites where existing development abuts the AONB, and should not of itself be regarded as a justification for extending development further into the AONB.
27. While I accept the assessment of landscape impact, it remains the case that the development would represent an intrusion of built development into the AONB, and would occupy an area of characteristic agricultural land which forms part of the setting of Langley Hill. I accept that the layout attempts to minimise this intrusion, by occupying the lower ground, and has the potential to create a less abrupt edge to development than presently exists. Nevertheless the

development would be highly visible to residents of the adjacent existing development, and from Clarendon and Whitworth Roads. These effects would be for the most part localised, though the wireline drawings show that the development would also be perceptible from Photoviewpoints 2 and 3, albeit in the context of the existing extent of development. This amounts to actual harm to the AONB, which would be in conflict with Policies SD8 of the emerging JCS and 1.1 of the NP.

Housing land supply

28. At the time the application was determined, the Council considered that it was not able to demonstrate a 5 year supply of housing land in accordance with advice in the Framework and Practice Guidance. However it has changed its position for the appeal, and now claims that it can demonstrate such a supply.

The Requirement

29. The parties are agreed that the requirement for Tewkesbury should reflect the full objective assessment of need (FOAN) set out in the Proposed Main Modifications to the JCS, that being 9,899 dwelling_s over the 20 year plan period (2011 - 2031), equating to an annual requirement of 495 dwellings.

The Buffer

30. Paragraph 2.3.3 of the JCS Housing Implementation Strategy (June 2017) states a 20% buffer has continued to be applied to the Housing Requirement in Tewkesbury Borough. While it has been suggested that recent performance in Tewkesbury Borough may suggest an opportunity to look at applying a 5% buffer, there is no convincing evidence before me to suggest that previous underperformance has been conclusively addressed, and that anything other than a 20% buffer should be applied. This *is* consistent with the JCS Inspector's interim report in May 2016 and the June 2017 Housing Implementation Strategy. I conclude that it is appropriate to apply a 20% buffer in this case, to give a 5 year requirement of 2,665 dwellings.

Adjusted requirement for completions to date

31. Against the annual housing requirement of 495 dwellings per annum, delivery to date of 3,224 units (2011/12 - 2016/17) equates to a total overprovision of 254 dwellings. The Council has subtracted this figure from the 5 year requirement to give an adjusted annual requirement of 2970
32. There is some disagreement about how the base figure should be adjusted to account for 'surplus' completions amounting to 254 dwellings in the past 5 years. The Council proposes deducting them from the gross 5 year requirement figure (2,475 dwellings), to give a net requirement of 2,221. Applying a 20% buffer then gives a total requirement of 2,665 for the period 2017/18 to 2021/22.
33. The Appellant has suggested an alternative approach to dealing with the 'surplus' completions, following the example set in an appeal decision in Buckinghamshire.¹ Here the Inspector concluded that the surplus should be considered over the whole plan period rather than in the shorter term. However, I find nothing explicit in the Framework or the Practice Guidance that

¹ APP/J0405/W/16/3152120 & 3152132

requires me to adopt this approach. The surplus is a matter of fact, and I consider that the adoption of a 20% buffer is sufficient to ensure that the assessment will be robust. I accept that 2,665 (533 dpa) is the appropriate base requirement in this case

34. The Appellant goes on to suggest that it is also appropriate to take a 'policy-on' approach to Tewkesbury's five year supply of housing, whereby delivery from strategic allocations at Leckhampton and Brockworth are apportioned to Cheltenham and Gloucester's supply. While I acknowledge that no formal 'sharing mechanism' for the apportionment of these completions exists at present (pending adoption of the JCS) it seems reasonable to recognise that these allocations have been made to meet the needs of Cheltenham and Gloucester respectively, and therefore they should not be seen as contributing to the supply of housing to meet Tewkesbury's OAN, notwithstanding that they are administratively part of Tewkesbury Borough.
35. On this basis, the Council states it can identify a supply of 2826 dwellings, equivalent to a supply of 5.30 years.

Components of supply

36. The Appellant considers that the Council's assumptions on build-out rates for sites with planning permission are over-optimistic. Those used by Tewkesbury have been compared with the latest average delivery rates of the main house-building companies. It was concluded that the average build-out rate per site was 41 units per sales outlet per annum. The Appellant accordingly suggests a range of completion rates on sites of different sizes. Looking only at the larger sites, the Appellant suggests that it would be reasonable to reduce the Council's assessment of likely completions by 208 dwellings (Policy-on assessment). On this basis, the Appellant concludes that the demonstrable supply is some 4.58 years (a shortfall of 243 homes), if the 'reverse Liverpool' approach is adopted.
37. The Council has assumed that deliverable sites without planning permission and under 100 dwellings will have a 1 year lead in from consent being granted to the first house being occupied. For sites over 100 there will be an 18 months lead-in period to first delivery. Assumed build-out rates are based on local circumstances and evidence, including that provided by developers. Where no specific update has been provided, the Council has assumed rates of 25 dwellings per annum and SO dwellings per annum per developer subsequently. On larger development parcels already under construction a delivery rate of SO dwellings in the first year has been assumed.
38. The Appellant has questioned delivery on the following specific sites.

Three parcels at Pamington Lane

39. The Council considers the site will deliver 150 houses during the assessment period, with 25 in 2017/18. The Appellant states that the site has been subject to arbitration in respect of land value over the past 6 months and the site is currently not being advertised on the developer's website. There is no sign of the matter being resolved.
40. The Appellant proposes a reduction of 50 dwellings over the 5 year period.

Columbine Road

41. The Appellant considers that a reduction of 40 dwellings is appropriate in accordance with assumptions on average delivery rates.

Clevelands phase 4 and 5

42. The Appellant accepts that there is no evidence to suggest that the site will not come forward, but delivery rates have been adjusted in accordance with the Appellant's analysis of delivery rates, resulting in a proposed reduction of 34 dwellings.

Brockworth District Centre

43. Development has been pushed back to 2018/19. The Appellant states that development has been stalled for seven years, and no new documents relating to the site have come forward since 2009. The Appellant accordingly proposes a reduction of 27 dwellings.

Land at Longford. Horsebere Mews

44. A full application for 197 units was granted on 14 August 2017, subject to a number of pre-commencement conditions, and the Appellant considers it is now unrealistic to expect completions within this monitoring year. The Appellant suggests delivery should be pushed back to 2018/19, and adjusted in accordance with the conclusions on national delivery rates. This would result in a reduction of 57 dwellings

Inspector's conclusion on 5 year supply

45. I have concluded that a 20% buffer is appropriate but there are no grounds for adopting the 'reverse Liverpool' approach to the apportionment of oversupply in the first six years of the plan period. Accordingly I consider that 533 dwellings per annum is the appropriate base requirement in this case.
46. If all the reductions proposed by the appellant were to be accepted, the identified supply would fall to some 2618 dwellings, or 4.9 years. I acknowledge that there appears to be some legitimate reason to assume that delivery at Pamington Lane may not commence in 2017/18, and that commencement should be moved back to 2018/19, though I do not accept that it should be moved into 2019/20 as the Appellant proposes. Completion of the development would then be within the five year period. I also accept that there has been no recent activity at Brockworth District centre since the completion of 25 dwellings in 2010/11. However there is no reason to suppose that the residual element should not occur within the five year period, even if it slips back from 2018/19 as currently shown in the Council's trajectory
47. With regard to delivery rates, the Appellant has applied broad conclusions from surveys, but would not appear to have reached any detailed evidence based conclusions with regard to individual sites. The Appellant applies average rates from a range of sites and developers, but I do not consider it would be reasonable to discount the Council's assessment of supply on such a basis in the absence of site specific information. The Council's trajectory is a locally based assessment, and there is no clear evidence that the sites would not deliver at the rates assessed.

48. I therefore do not accept that there is any justification for reducing the assessment of supply as proposed by the Appellant. Accordingly I find that the Council can currently demonstrate a five year supply of housing.

Conclusion and balancing exercise

49. The Framework identifies three dimensions to sustainable development: economic, social and environmental. To achieve sustainable development economic, social and environmental gains should be sought simultaneously.
50. With regard to the economic dimension, the development would contribute directly to economic activity during the construction phase, and through the ongoing requirement for maintenance and improvement. The development would also increase demand and custom for existing local services and facilities, including retail, health and public transport provision. The construction phase would last for a limited period, and the scale of the development is not such that would attract more than limited weight in the balance. While it is also argued that it would augment Council Tax revenues and attract new homes bonus, this would broadly reflect the increase in demand for publicly provided services, and so should be regarded as having a neutral effect in the balance.
51. The provision of market housing and a proportion of affordable housing would make a contribution to the social dimension of sustainability. This would be adjacent to an existing settlement which has a reasonable level of service provision and is identified as one of two rural service centres in the emerging JCS. Accessibility to affordable housing is recognised as a key issue in the NP, and a backlog of households in need is identified. The housing register shows 94 households who currently live in Winchcombe on the waiting list, of which 28 households are in priority need (January 2016). The contribution from this development to both market and affordable housing would be modest in the context of Tewkesbury as a whole but would help to meet an identified deficiency in Winchcombe, and therefore weighs positively *in* the balance.
52. The appeal is accompanied by a Section 106 obligation which, in addition to securing 40% affordable housing, includes contributions towards education provision, open space, the completion and implementation of a travel plan, and other contributions to cemetery provision, allotments, waste management, and library services. These are all necessary to make the development acceptable and therefore, with the exception of affordable housing, should not be independently accounted as benefits to be weighed in the balance.
53. I now turn to the environmental dimension. Being in the **AONB**, the site falls within an area where specific policies in the Framework indicate that development should be restricted, and therefore the presumption in favour of sustainable development is not triggered in this case. I have also found that the Council is able to demonstrate a five year supply of housing land. In the circumstances the appeal is to be determined in accordance with the development plan, unless material considerations indicate otherwise.
54. I accept that Policy HOU4 of the LP is out of date having regard to the advice in paragraph 215 of the Framework. The housing allocation figures derive from a now defunct Structure Plan, and it is possible that some development boundaries will change as part of the process of preparing and adopting the forthcoming Tewkesbury Borough Plan 2011 - 2031, to meet needs identified

in the JCS, though by no means certain that all existing development boundaries will need to change. In this instance however, the site lies wholly within the AONB which has the highest level of landscape protection and where great weight should be given to conserving landscape and scenic beauty. I accept that paragraph 116 of the Framework does not apply to this development, but it is nevertheless a development of some significance which will have an adverse impact on the **AONB**, by replacing the current open agricultural land with built development. The **AONB** designation is of long standing and though it is not unalterable, it is readily understood by the public as conferring a particular status on and value on land included within the designation as well as being a matter of great weight in the light of paragraph 115 of the Framework.

55. Policy 5D8 of the emerging JCS requires all development proposals within the setting of the Cotswolds AONB to conserve and, where appropriate, enhance its landscape, scenic beauty, wildlife, cultural heritage and other special qualities. In this respect it is consistent with the advice in the Framework and can be accorded substantial weight. The development would be in clear conflict with this policy, and also with Policy 1.1 of the recently Gtdopted neighbourhood plan (WSNP) as it would not protect or enhance the Cotswolds AONB.
56. I accept that the existing settlement boundary may change in future through the development plan process, to accommodate housing need identified through the review of development plan policy for the area. This may include development within the AONB around Winchcombe. I also note that Winchcombe is identified as a very sustainable settlement in the evidence base supporting the JCS². However, at the present time, with the Council able to demonstrate a five year supply of housing land, I do not consider that the material considerations identified are so significant or the need to identify further housing sites so pressing as to outweigh the conflict with the development plan and the importance placed on the protection of the **AONB** in the Framework.
57. For these reasons, I conclude that the appeal should be dismissed.

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INSPECTOR

² JCS Rural Area Settlement Audit - July 2017. Winchcombe scores 41 out of a possible 48 points for services and accessibility.