Town and Country Planning Act 1990 – Section 78

Town and Country Planning (Development Management Procedure) (England) Order 2013

Town and Country Planning (Inquiries Procedure) (England) Rules 2000

Appeal Ref: APP/P0119/W/21/3288019

Appeal by Barwood Development Securities Ltd and the North West Thornbury Landowner Consortium

concerning

Land to the west of Park Farm, Butt Lane, Thornbury

**OPENING STATEMENT OF**

**SOUTH GLOUCESTERSHIRE COUNCIL**

**Introduction**

1. In this appeal, Barwood Development Securities Ltd and the North-West Thornbury Landowner Consortium (“the appellants”) seek permission for:

*“Erection of up to 595 dwellings (Use Classes C3), land for a Primary School (Use Class D1), up to 700m2 for a Retail and Community Hub (Use Classes A1, A2, D1), a network of open spaces including parkland, footpaths, allotments, landscaping and areas for informal recreation, new roads, a sustainable travel link (including a bus link), parking areas, accesses and paths and the installation of services and drainage infrastructure (Outline) with access to be determined and all other matters reserved”*

1. The application was made and validated on 21 December 2018, with two subsequent full or partial resubmissions in January 2020 and September 2020. The appellants brought an appeal for non-determination on 30 November 2021.
2. South Gloucestershire Council (“the Council”) indicated that it would have refused the application, with the following four putative reasons for refusal:

*“1. The proposed development would cause less than substantial harm at the lower end of the spectrum to the setting of the Grade I listed Thornbury Castle and St. Mary’s Church and the Grade II listed Sheiling School and Thornbury Conservation Area. Great weight is required to be attached to this harm and applying PSP17 and paragraph 202 of the NPPF it is not considered that the public benefits of the proposal outweigh that harm.*

*2. 14.4ha, 40% of the site is grade 2 and 10.3ha, 29% is grade 3A agricultural land. The proposed development would develop most of this land. The development of this amount of high quality agricultural land is considered to be significant. Policy CS9 seeks to avoid the development of best and most versatile land and paragraph 174 of the NPPF seeks to protect soils in a manner commensurate with their quality. Paragraph 175 seeks to allocate land for development with the least environmental value and requires that where significant development of agricultural land is necessary poorer quality land should be preferred to higher quality land. In light of the Council having a five-year supply it is not considered that the development of this land is necessary and, in any event, it is not of lower quality land. The proposal is therefore contrary to policy CS9 and paragraphs 174 and 175 of the NPPF.*

*3. The proposal development is speculative in nature and would result in development beyond the defined settlement boundary of Thornbury in the open countryside, beyond the scale of development considered appropriate and provided for to revitalise the town centre and strengthen community services and facilities in Thornbury. Therefore, the proposal is contrary to policies CS5 and CS34 of the adopted South Gloucestershire Core Strategy*

*4. In the absence of a Section 106 legal agreement to secure the following:*

*• On-site public open space and a contribution towards off-site sports facilities*

*• The delivery of self-build or custom plots*

*• Affordable housing of a suitable tenure mix and unit types*

*• Highway works and Travel Plan*

*• Land for Education purposes”*

**Housing delivery**

1. The important backdrop for the determination of this appeal is that this development is sought within the area of an authority which currently has a good record of housing delivery. Thus, as against the last 3 years’ requirement of 3578 units, the Council has seen delivery of 4755 units.
2. A very clear justification therefore needs to be advanced in order to allow development of an unallocated, greenfield site in the open countryside. The evidence will show that there is no such justification; indeed, there are very good reasons for refusing the appeal.

**Decision-making framework**

1. The first matter to be determined is the decision-making framework within which, having considered the provisions of paragraph 11 of the NPPF, the appeal must be determined. The appellants assert that the Council’s policies relating to the scale and location of development at Thornbury are out of date, on two bases.
2. It is firstly asserted that the Council cannot demonstrate a 5-year supply of housing land. However, that assertion will be demonstrated to be incorrect. The Council’s evidence will show that delivery on the so-called disputed sites is generally proceeding apace, and the deductions from supply suggested by the appellants are unjustified.
3. It is further suggested that the relevant policies are out-of-date due to general housing supply considerations. Again, these contentions are unjustified. The relevant policies remain consistent with the NPPF and, in the context of the favourable delivery rates being achieved, are up-to-date.
4. Accordingly, the tilted balance is not engaged and the application must be judged on a normal planning balance, with benefits being weighed against disbenefits.

**Benefits**

1. The Inspector will of course give due weight to the benefits of the scheme, as follows:

• Provision of 387 market dwellings

• Provision of 208 affordable dwellings

• Ecological improvements

• Provision of new public open space

• Associated economic benefits

1. However, the assessment of weight must be conditioned by the fact that the Council already benefits from a 5 year housing land supply and satisfactory housing delivery.

**Spatial Strategy**

1. Furthermore, there are very considerable disbenefits from the scheme. First, it os clearly in breach of basic tenets of the development plan’s spatial strategy. The site is located outside of the settlement boundary of Thornbury, is not included in the locational strategy of the Core Strategy, and as such is contrary to the development plan. The proposal is contrary to policies CS5 and CS34 of the Core Strategy and PSP40 of the Policies, Sites and Places Plan which seek to locate development in more sustainable locations.
2. The proposal also falls outside the housing opportunity area to the North of Thornbury (500 dwellings) and Land off Morton Way (300 dwellings) identified under Policy CS33 of the Core Strategy and Policy CS32 which directs the new development planned for Thornbury in the Core Strategy.
3. Policy CS15 outlines the distribution of housing over the Core Strategy plan period 2006-2027 and includes 800 dwellings at Thornbury at the Park Farm and Morton Way development sites. The proposals fall outside of these allocations, and is in excess of them. The spatial strategy of the core strategy directs growth to the north and east fringes of Bristol, where the allocations benefit from coordinated infrastructure packages and more sustainable locations.

**Heritage**

1. The Council’s evidence identifies that there is less than substantial harm to the setting of the two Grade I properties Thornbury Castle and St Mary’s Church, the Thornbury Conservation Area and the Grade II listed school. The NPPF advises that in paragraph 199 that great weight should be given to the conservation of designated heritage assets. With harm to two Grade I buildings, a Grade II listed building and the Conservation Area, considerable weight should be given to this harm. Paragraph 202 states where development proposals lead to less than substantial harm to the significance of a designated historic asset this harm should be weighed against the public benefits of the proposal.
2. When weighing the harm to the heritage assets identified above, the Council will demonstrate that the heritage harm outweighs the public benefits of the proposal and there is no basis to grant planning permission.

**Agricultural Land**

1. The proposal results in a significant loss of best and most versatile agricultural land which is not necessary as the site is not required to contribute to the five year housing land supply.
2. The loss of this BMV is contrary to policies CS9 and CS34 of the development plan and contrary to the advice in paragraph 174 and footnote 58 of the NPPF.

**Contributions**

1. Whilst contributions are now mostly agreed, the amount for open space inspections is not, and the development thus still fails to make the contributions necessary to mitigate in full adverse planning effects.
2. Accordingly, when the correct, normal, planning balance is applied, the disbenefits of a scheme which is so clearly contrary to the development plan patently outweigh the benefits, such that permission should be refused.

**Paragraph 11(d) engaged**

1. In the event that, contrary to the Council’s case, it is concluded that relevant policies are out of date, such that at paragraph 11 (d) is engaged, it remains the case the planning permission ought to be refused.
2. The heritage disbenefits noted above, which are not outweighed by any public benefits, provide a clear reason for refusing planning permission. In accordance with the framework for decision-making provided by the *Monkland* decision, that clear reason suffices to disapply the tilted balance. Once the tilted balance is disapplied, the overall balancing exercise thereafter required still points in the direction of a refusal, notwithstanding that the Council does not (in this scenario, which the Council resists) have a 5-year housing land supply.
3. On any basis, therefore, the Council contends that planning permission should be refused.

**ANDREW FRASER-URQUHART KC**

**Francis Taylor Building**

**Inner Temple**

**LONDON EC4Y 7BY**

**29th September 2022**