



Appeal Decision

Inquiry opened on 10 January 2023

Site visits made on 1 November 2022 and on 9 and 13 January 2023

by Mrs J Wilson BA (Hons) BTP MRTPI DMS

an Inspector appointed by the Secretary of State

Decision date: 24th March 2023

Appeal Ref: APP/G1630/W/21/3284820

Part Parcel 0025, Hill End Road, Twyning, Gloucestershire, GL20 6JD, 389971, 237249.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission
 - The appeal is made by Hayfield Homes against Tewkesbury Borough Council.
 - The application Ref 21/00291/OUT, is dated 2 March 2021.
 - The development proposed is an Outline application for up to 55 dwellings and detailed access from Hill End Road, with all other matters reserved.
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Decision

1. The appeal is dismissed, and planning permission is refused.

Preliminary Matters

2. The application is made in outline with only access to be determined. Accompanying the application is a Framework Plan which I have treated as illustrative. Additional plans not part of the original submission indicate how the access, visibility splays and retaining walls would be formed, these were confirmed to have been the subject of consultation during the life of the application by Tewkesbury Borough Council (the Council). I have therefore considered these detailed plans in respect of the access.
3. The Council set out its putative reasons for refusal in April 2022, these refer to the emerging policies of the Tewkesbury Borough Plan (the TBP). The TBP was adopted by the Council on 8 June 2022 and I have considered the appeal on the basis of the adopted rather than the emerging policies which are referred to in the putative reasons for refusal.
4. Additional notices of ownership were served in respect of two small areas of land to the southern extremities of the site. I am satisfied that the owners of the land have had an opportunity to comment on the appeal proposal and have not been prejudiced by service of notice at the appeal rather than the application stage.
5. The Council, following the result of an independent review, confirmed it did not intend to pursue the fourth putative reason for refusal relating to highway safety. I have no evidence before me which would lead me to take a different view on this matter though this is entirely separate from the visual impacts of the access, a matter to which I will return.

6. I held an online Case Management Conference (CMC) on 13 September 2022. The CMC discussion covered the following; the identification of main issues; how the evidence would be dealt with at the Inquiry; the provision of statements of common ground; the listing of core documents and the timetable for their submission along with other procedural matters. The merits of the case were not part of that discussion.
7. Two revised Section 106 agreements were submitted towards the latter stages of the Inquiry. The first relating to Gloucester County Council (GCC) and the second in respect of this Borough Council. These agreements overcame the matters identified in the fifth putative reason for refusal to the satisfaction of both Councils. I shall return to them later in my decision.

Main Issues

8. The main issues are:
 - a) The effect of the development on the character and appearance of the area including its effect on protected trees.
 - b) Whether the site is a suitable location for development having regard to local and national planning policy.
 - c) The housing land supply (HLS) position for Tewkesbury Borough Council.

Reasons

Site Description and Background

9. The appeal site is an area of mixed woodland located immediately to the north of the village of Twyning. The entire appeal site is subject to a Tree Preservation Order ¹ the central core of which is a mixed woodland of oak, birch, ash, willow, cherry, and hazel. It was planted in 2012 as part of an environmental initiative involving the Woodland Trust to celebrate the Diamond Jubilee of Queen Elizabeth II. For that reason, the woodland has a cultural significance for the local community. Prior to 2012, the site was an open field, historical mapping indicates that it was known as Nut Orchard though no evidence was produced, beyond the name attributed to it, to indicate any other historic use. There are mature trees and older vegetation to the outer edges of the appeal site and whilst layout is not for determination through this appeal, the indications are that generally boundary planting would be retained.
10. The woodland is on slightly elevated land above the village and there are four Public Rights of Way (PROWs) which cross or border the site. Those which cross this woodland produce a strong feeling of enclosure even though from some points longer range views are achieved across the surrounding landscape particularly towards the Cotswold Area of Outstanding Natural Beauty (AONB), the boundary of which is some distance to the east beyond the M5 corridor. The 2014 Landscape and Visual Sensitivity Study² defines the area including the appeal site as having a high visual sensitivity and a high landscape sensitivity.

¹ TPO reference No.410 - Dated 20/10/21

² Appendix 2 to CD A1.15 Landscape and Visual Appraisal 2021 referring to TBC Landscape and Visual Sensitivity Study 2014

11. The site is accessible via the PROWs which cross the site which are also connected to footpaths in the wider area with points of access on the northern edge of the site via timber stiles and on the southern edge via footways. These footways connect to Hill End Lane and from a number of points onto Hill End Avenue. This gives widespread access on foot for the local community. The young woodland, whilst planted as part of a Forestry Commission and community initiative, remains in private ownership with no public access to it other than via the PROWs. Moreover, the land has changed ownership and the appellants have confirmed that the Forestry Commission funding paid via the English Woodlands Grants Scheme has been repaid as the terms attached to it had not been fulfilled.
12. Temporary Heras³ fencing has been erected to both sides of the footpaths which cross the site. The Inquiry was advised that these were erected after the submission of the appeal proposal with their purpose being to prevent users of the path straying onto the privately owned parts of the appeal site.

Character and Appearance

13. The experience of the site for users of the public footpath network is that of a tranquil environment which, for the most part, is visually separated from the village. The appellants⁴ describe a strong sense of enclosure and separation from the settlement and the wider rural landscape. Whilst there is an awareness of a visual connection with the village from the southern edge of the site, I found there to be a profound sense of tranquillity experienced when walking the footpaths across and around the appeal site. There was a very distant sense of traffic noise however the overwhelming experience was that of complete solitude, enhanced by a continuous presence of birdsong.
14. The presence of the Heras fencing defining the edges of the public rights of way detracts from the visual enjoyment of users of the footpaths. However, the fencing is a feature which is temporary in nature and its open construction and appearance mitigates that impact. It does not detract from the sense of separation from the village that users of the paths experience across the site. Importantly, I found that the fencing does not substantially diminish the experience of the woodland for users of the footpath.
15. On the occasions that I visited the site I observed that the paths were well used for recreation. It was also clear from the evidence given to the Inquiry that the site and wider surrounding area are highly valued by local residents. The young woodland makes an important contribution to the enjoyment of the users of the PROWs. Representors attested to the environmental benefits of the woodland and the contribution it makes to the wellbeing of local residents. The proximity of the woodland to large areas of housing in the village make it readily accessible to the local community and that proximity encourages daily usage.
16. Even though the public rights of way would be retained or diverted to alternative routes, the character of the site area and the manner in which it is experienced would be permanently, irreparably, and irreversibly changed by the extensive loss of protected trees and the introduction of residential development.

³ Temporary fence panelling of open wire construction approximately 2 metres in height

⁴ Paragraph 4.19 of Paul Harris POE

17. In evidence it was established that the proposal would not have a significant effect on the wider landscape setting of the site or the village and that the appeal site was not subject to any special designation nor was it categorised as a valued landscape. Similarly, there would be no substantive effect on the Cotswolds AONB. Nonetheless, I saw from my visits that the development of the site would be visible from the footpath network to the north. From this higher land the loss of the central core of the woodland would be highly noticeable and the introduction of the roofscape associated with up to 55 dwellings would be conspicuous and intrusive in the local landscape. Moreover, from this direction the existing established soft edge to the village would be diluted by the development which would represent a harmful visual intrusion in conflict with Policies LAN2 and NAT1 of the TBP the latter of which automatically applies to trees protected by a Tree Preservation Order⁵. These aims are consistent with the Framework provisions protecting the natural environment.
18. It was accepted that the proposed development will result in the loss of hedgerow to Hill End Lane together with the majority of the young trees within the woodland which are protected by a woodland TPO⁶. The arboricultural assessment of these trees was disputed with differing values placed when measured against the cascade chart for tree quality assessment⁷. It was clear that a large proportion of the 2000 trees planted in 2012 are young and have not yet reached the 150mm diameter, a size which would afford them a higher classification arboriculturally. Nonetheless the trees clearly have a considerable life expectancy and are part of a local commemorative initiative and have a higher collective rating than they would have as individual trees. The quality assessment is advisory, and the matrix is open to greater interpretation than the more rigid version advocated by the appellants.
19. Evidence was given that the woodland had not benefited from any tree management since its planting, conversely it was put to me that the woodland had established well and would not have required active management. It was not disputed that most of the planted trees are growing well, and they form a healthy albeit young woodland. The Framework⁸ recognises the intrinsic character and beauty of the countryside, and the wider benefits from natural capital, this includes the benefits of trees and woodland. On this site the trees form a healthy woodland which was planted for community benefit, but which is in private ownership.
20. The Framework has a clear environmental objective to protect and enhance the natural environment and the woodland performs a role in relation to resilience to climate change. In this case the cumulative impact of the number and density of young trees make a significant contribution to local character. The woodland has good future potential to develop to maturity without causing harm to, or conflict with, adjoining properties and uses. It also contributes to the wider green infrastructure network and is of value in that regard. The loss of the woodland would undermine the aims of Policy NAT1 of the TBP which seeks to protect trees and which is not limited to ancient woodland and veteran trees. It would also conflict with Policy GD4 of the Twynning Neighbourhood Plan

⁵ Paragraph 8.46 of the TBP

⁶ TPO reference (No.410) 2021

⁷ Table 1 Cascade chart for tree quality assessment – source page 9 BS 5837:2012 attached to JB Holding POE

⁸ Paragraph 174 b)

- (the TNP) which seeks to safeguard and where appropriate enhance existing trees and resist their removal.
21. Paragraph 131 of the Framework makes clear that trees make an important contribution and can help to mitigate and adapt to climate change. The Framework is also clear that measures should be put in place to secure the long term maintenance of newly planted trees and to retain existing trees wherever possible. The Framework recognises the contribution which trees make to climate change resilience.
 22. The extent of the tree removal would effectively result in the loss of the overwhelming majority of the young woodland trees, the retained tree groups would be fragmented and the character of the site as woodland would be lost.
 23. The sheer quantum of trees planted means that the woodland provides a high level of public amenity from the established PROWs and even though surveys do not reveal the presence of protected species the woodland has a wildlife value and character which would be obliterated across a substantial proportion of the site. The rural experience enjoyed by users of the PROWs through and around the site would inevitably be lost as a result of the proposed development. The contribution which the woodland makes to the character of the area is a factor which weighs heavily against the removal of the woodland.
 24. Local representors and elected members attested to the health benefits and amenity value for families and local residents. These benefits would be lost by the proposal and would not be satisfactorily mitigated by formal public access to areas of the site adjacent to the footpaths which is proposed in the development. As such it would fundamentally conflict with the aims of the TNP.
 25. The effect of the creation of the access onto Hill End Lane with the changes to provide visibility splays and footpaths would also result in the urbanisation of Hill End Lane where the existing vegetation makes a considerable visual contribution to the edge of the village as the Lane transitions from the village to the more sporadic built form at Hill End which is generally linear in nature. The extent of the physical alteration involved, given that the level of the site sits above Hill End Lane, would result in the extensive loss of trees and vegetation such that the formation of the access would have an urbanising and visually harmful effect on the appearance of the site from Hill End Lane.
 26. Policy GD4 of the TNP focuses on the protection of natural and ecological assets aiming to reinforce local distinctiveness, protect features which are culturally significant unless there are overriding reasons for their removal. Policy GD4 also expects and requires applications for residential development to set out measures to safeguard and where appropriate enhance existing trees sympathetic to the character and visual quality of the area, and to respect, enhance and not be detrimental to the character or visual amenity of the landscape. The proposal would be at odds with these requirements.
 27. The appellants have proposed mitigation in the form of a surrogate site, the planting of which was initially intended as the provision of land to achieve a substantive level of Biodiversity Net Gain (BNG) secured through a section 106 agreement. A concession was made during the latter stages of the Inquiry to incorporate some public access to that land, the manner and extent of which would be determined in the future between the Council and the developer.

28. I visited the surrogate site and saw that an existing public footpath skirts its northern boundary. The surrogate site is accessible on foot a short distance up the hill and is around 10 minutes walk away from the appeal site. It was clear that the scheme involved the relocation of 50 of the trees from the appeal site whilst around 2000 would be lost. It was established in evidence that the requisite amount of BNG could be achieved through improvements to the quality of the surrogate land and that its use for that purpose would be secured for a minimum of 30 years. From the evidence before me, even though the surrogate site would facilitate BNG in excess of that required, it would not represent an equivalent facility for the local community even taking into account the undertaking to provide an as yet undefined level of public access. The surrogate site would not represent an equivalent area to the appeal site visually nor in terms of character and appearance. Indeed, the appellants confirmed that the surrogate site would not be woodland but enhanced pastureland. It would be far less accessible or useable to the village community and would be of a substantively different character.
29. I do not criticise the provision of the surrogate site as alternative biodiversity land which would be enriched for that purpose. The technical assessments presented indicate that replacement habitat could be achieved to secure the requisite BNG. The site is however more remote from the village such that the use of it would be no match to the extent that the village community currently use the appeal site. In terms of an equivalent or replacement facility, it would not in my judgement provide sufficient mitigation to justify the loss of the protected woodland.
30. Taking these matters together the proposed development would represent an unsympathetic encroachment into open countryside resulting in an incongruous and urbanising intrusion into the protected woodland. This would result in significant and demonstrable harm to the character and appearance of the appeal site and the local landscape in a location cheek by jowl with the village.
31. For these reasons the proposal would conflict with Policies SD6 and INF3 of the Gloucester, Cheltenham, and Tewkesbury Joint Core Strategy 2011-2031 (2017) (JCS), Policies LAN2, NAT1 and NAT3 of the TBP, Policy GD4 of the TNP, and advice set out in the Framework. These policies, amongst other things, seek to protect landscape character for its own intrinsic beauty and for the benefit it brings to environmental and social wellbeing, to protect trees and conserve green infrastructure and the natural environment.

Spatial Distribution

32. The adopted development plan comprises the JCS, the TBP, and the TNP. These plans direct that new development is to be focused in and around the main settlements. The site lies outside the settlement boundary of Twyning though within the TNP area. For the purposes of planning policy, the appeal site lies within the open countryside, this was not disputed by the parties.
33. The JCS is now over five years old, and work has begun on the preparation of the JCS Review. However, work is still at a very early stage such that very little weight can be given to the policy contents of the JCS Review.
34. The spatial strategy intends to deliver the housing requirement through a combination of capacity within settlement boundaries, local plan allocations and land allocated through the neighbourhood planning process. Service villages

are identified for meeting lower levels of development also to be allocated via the TBP and the TNP. These requirements are set out in Policies SP2 and SD10 of the JCS. The development plan does support that new housing can be considered outside of defined Settlement Boundaries where such development would meet criteria set out in other policies in the plan or where it is essential for the proposal to be located in the countryside; neither is the case here.

35. The site lies outside the development boundary of the village of Twyning, it is not allocated for residential development and does not accord with the exceptions provided for by the development plan including Policy GD1 of the TNP which reflects the spatial requirements of the JCS.
36. Taking these matters together the development would conflict with the strategy for the distribution of new development in Tewkesbury Borough and represents development which is neither anticipated nor sought by the development plan. It would conflict with Policies SP2 and SD10 of the JCS, Policy GD1 of the TNP and Policies RES3 and RES5 of the TBP. These policies seek to ensure that the distribution of new development in Tewkesbury Borough is focused on main settlements and within service villages unless it meets specified exceptions; to ensure that new housing respects the form of the settlement and its setting and does not represent an intrusion into the countryside.
37. In reaching this conclusion I have not found conflict with Policy RES2 of the TBP which refers to development within settlement boundaries and which does not apply to the appeal site.

Housing land supply

38. The JCS⁹ applies to Tewkesbury and is now more than five years old. It is a matter of agreement between the Council and the appellants that, in accordance with paragraph 74 of the Framework, the correct approach to defining Tewkesbury's Local Housing Need (LHN) is the use of the Standard Method (SM). This is calculated for local authority administrative areas. It is also common ground¹⁰ that the land supply period is 1 April 2022 to 31 March 2027 and that the local housing needs figure for the Tewkesbury administrative area is 578 homes per annum¹¹.
39. The parties disagree on whether the Council can demonstrate a 5-year supply of housing. Disputes relate to the attribution of units from strategic housing sites on the periphery of the Tewkesbury district which are part of the strategic allocations within the JCS to serve Gloucester City, and the way those units are accounted for now that the JCS is more than five years old and the housing requirement is to be calculated by the SM. At its core, the issue is whether, on a geographical basis, the dwellings arising from the strategic allocations which lie within Tewkesbury's administrative area should now be included in the supply figures for Tewkesbury¹². The difference between the two positions is substantial with the appellant arguing a figure of 2.23 years supply and the Council 6.61 years supply¹³.

⁹ CD E1

¹⁰ HLS SoCG CD C9 Para 2.3

¹¹ HLS SoCG CD C9 Para 2.6

¹² Cheltenham figures have not yet been included as the urban extension sites in Tewkesbury but serving Cheltenham cannot yet be considered deliverable against the Framework glossary definition.

¹³ Page 8 of Core document C.9 HLS SOCG

40. The TBP was adopted in June 2022. At that time the examining Inspector recognised that the JCS had been adopted in 2017 on the basis that an immediate review would be carried out to address an anticipated future shortfall in HLS in Tewkesbury. That review has not taken place. The TBP Inspector also confirmed that it was not the role of the TBP as a stage II allocations plan to address the strategic policy framework for which the proper mechanism would be the JCS Review. The JCS indicates that the district level plans, in this case the TBP, will provide more detailed and locally specific planning policies as well as local site allocations (para 3.1.18).
41. Policy SP2 in the JCS explicitly states that regardless of the fact that the majority of the land is within Tewkesbury Borough, the urban extensions are identified to meet the unmet needs of Gloucester or Cheltenham. Therefore, dwellings being delivered on urban extensions to Gloucester or Cheltenham will contribute solely to the needs of their land supply calculations (Paragraph 3.2.23)¹⁴. This gives clear recognition of the commitment by the three authorities to a joint approach identifying sites in Tewkesbury to meet the needs arising from the urban areas in Gloucester City and Cheltenham.
42. Notwithstanding the commitments of the JCS to the level of housing need under the Objectively Assessed Need (OAN) calculations and the inclusion of supply figures there is nothing to confirm that any commitment to an accounting methodology for delivery has been established between the three JCS authorities. It was asserted¹⁵ that the Housing Delivery Test (HDT) data takes a joint approach to monitoring the delivery of housing across the JCS, though that was subsequently clarified by the Council as inaccurate with delivery accounted separately for each of the three Councils. HDT by its very nature takes a retrospective look at delivery rather than considering the forward supply though serves to illustrate that the Councils are not reporting jointly.
43. The Planning Practice Guidance (PPG) defines a 5-year supply as 'a supply of specific deliverable sites sufficient to provide 5 years' worth of housing against a housing requirement set out in adopted strategic policies or (my underlining) against a local need figure using the standard method'. It goes on to say that LHN calculated using the SM should be used in place of the previous housing requirement where the strategic policies are more than five years old. Whilst Framework Paragraph 74 is very clear regarding LHN, neither that paragraph, the PPG nor the SM indicate that the method by which housing supply is to be accounted for should alter. It is clear from the inputs that LHN operates housing need purely on administrative boundaries. This applies to all three JCS authorities given the age of their joint plan.
44. It is understandable that Tewkesbury should re-evaluate their overall position following the 5 year anniversary of the plan on 12 December 2022, however the LHN pertains to housing need and there is no substantive evidence that this change to the local needs figure would impact on the spatial distribution set out in Policy SP2 of the JCS. Crucially, Policy SP2 was not argued to be out of date nor inapplicable during the Inquiry other than in respect of the quantitative elements of housing numbers.

¹⁴ JCS figures identify 4895 to serve Gloucester and 2610 to serve Cheltenham – source table SP2a

¹⁵ By the Councils HLS Witness Mr Pestell

45. Furthermore, the content of Policy SP2 in respect of strategic sites within Tewkesbury and their attribution to supply is quite specific. The effect of these circumstances leaves TBC in the unenviable position that their housing need has increased through LHN whilst their ability to meet that need remains constrained through the JCS commitments to meet unmet need from Gloucester (and later for Cheltenham) on strategic allocations on the edge of the urban area of Gloucester and Cheltenham but within the Tewkesbury administrative area. Even so, the policy commitment of the three Councils to work together to deliver development in the most sustainable urban locations is explicit and the wording of Policy SP2 went unchallenged at the Inquiry save for the quantitative LHN point. On the evidence before me, the spatial aspects of Policy SP2 remain relevant. In terms of the reporting and delivery of dwellings and the method of their attribution to housing supply I have no persuasive evidence before me to support any commitment or methodology for units delivered within Tewkesbury but on the JCS strategic sites to be credited in supply terms other than in accordance with Policy SP2 of the JCS.
46. It was put to me that the houses on the strategic sites intended to meet the housing needs of Gloucester City and Cheltenham which lie within the Tewkesbury administrative area, would disappear if they were not attributed to Tewkesbury as neither Gloucester City nor Cheltenham would be able to count them under LHN. However, that approach conflates housing need with supply when the two are markedly different steps in the process and which must be undertaken separately¹⁶. Moreover, there is nothing in the Framework or the PPG which indicates that supply must be calculated only by reference to deliverable sites in the TBC area in circumstances where LHN is being used to determine the housing need.
47. The numerical aspects in Policy SP2 have been superseded by the LHN calculations for all three Councils, however, the spatial strategy in that policy is manifested in the strategic allocations for the urban extensions. To my mind, adopting an alternative approach for the calculations of need, driven by the LHN using the SM does not undermine the intended role of strategic sites nor does it provide for an alternative apportionment of supply to that identified in the JCS. The currently proposed apportionment of housing growth may change through the JCS Review process but that is not a matter for this appeal but rather for the separate JCS Review process. Insofar as the application of the spatial strategy in the JCS is concerned the development plan policies are the fundamental starting position and set the context for the consideration of this appeal having the force of the statutory development plan.
48. The Inquiry heard evidence in a round table session about the detail of several sites which the appellants contended were not deliverable. Some adjustment of these figures arises from concessions made by the appellants on updated information, which would benefit the Council's position rather than that argued by the appellants in their original evidence. However, those adjustments would not materially alter the overall position on 5-year HLS given the quantum of development involved in the strategic sites which policy makes clear are to be taken to meet the needs of Gloucester City (and Cheltenham) within the JCS.
49. Taking all of the above factors into account, and on the basis of the facts and evidence before me, I find the appellants approach to the assessment of

¹⁶ PPG Reference ID: 2a-001-20190220

housing supply to be the more appropriate course of action. Consequently, I conclude that an HLS in excess of 5 years cannot, at this time, be demonstrated.

50. In reaching this conclusion I have had regard to the appeal decisions elsewhere in Tewkesbury and the surrounding area which have been referred to. Those decisions referred to predate the change to the LHN method of calculating need for the JCS and pre-date the adoption of the TBP. In that regard the circumstances are materially different, and I have to determine this appeal on the facts and evidence as they relate to the circumstances now. In any event those appeals do not alter my conclusions on this matter.

Other matters

Asset of Community Value

51. The appeal site is currently identified as an Asset of Community Value (ACV) though that designation has been challenged and is due to be heard by the land tribunal on an as yet unknown date. The nomination of the woodland as an ACV was made by Twyning Parish Council and serves to highlight the importance that the local community places on the use and the social value of the land. Notwithstanding this, Policy COM1 of the TBP which covers the protection of Community Assets and sets criteria by which any loss of an ACV would be considered, is not cited in the putative reasons for refusal and it cannot be certain at this time whether the ACV will be confirmed. Therefore, the weight that can be attributed to the ACV listing at this time is limited and it has not been determinative to the outcome of this appeal.

Protected Species

52. Ecological evidence was presented by the appellants the detail of which was not challenged by the Council. The appellants surveys undertaken have not revealed the presence of protected species on the site. In the event that development was to proceed planning conditions could be imposed to ensure that ecological enhancement features would be secured.

Effect on Designated Conservation sites

53. The appeal site lies around 730m west of the Upham Meadow and Summer Leasow Site of Special Scientific Interest and is also within the impact risk zone for the Bredon Hill Special Area of Conservation. A shadow Habitats Regulations Assessment¹⁷ was undertaken by the appellants which concluded that the proposals would not be likely to impact, either alone or in combination, with the designated sites close to the appeal site and the Council did not dispute those conclusions. Taking a precautionary approach, the appellants intend to include mitigations measures through the requirements for Homeowner Information packs. On the basis of the evidence there is nothing to indicate that the proposed development would result in likely significant effects on the identified sites, and I am satisfied that in the event that I were minded to allow the appeal, an appropriate assessment would not be required.

¹⁷ CD C1.16

Other Issues Raised

54. The land ownership dispute in relation to whether land on the site frontage is highway or privately owned is noted. However, it is not for me to determine who owns that land as the dispute is of a private nature outside the remit of the appeal process.
55. The Parish Council highlight that there is a local issue with foul sewage in the village with insufficient capacity to serve additional dwellings. Severn Trent Water considered the application in relation to wastewater and raised no objections subject to the imposition of conditions regarding the disposal of waste and surface water flows which would avoid exacerbating any flooding issues in order to minimise the risk of pollution. The Lead Local Flood Authority also raised no objection subject to conditions. On this basis there is no substantive evidence to demonstrate that satisfactory infrastructure could not be secured for the site.
56. There is a cultural significance of the woodland having been planted by villagers as part of an initiative for the Queens Diamond Jubilee. Policy GD4 of the TNP states that features which are culturally significant shall be retained unless there are overriding reasons for their removal. In this regard the loss of the woodland weighs against the proposal given the conflict with the content of the TNP.
57. I have had regard to other concerns raised in correspondence and at the Inquiry by interested parties, beyond those already addressed. However, none of these concerns are significant enough to alter my conclusions on the main issues or weigh materially for or against the proposal. Consequently, I do not address them further.
58. The appellant argued that there was no good reason to depart from the officer recommendation initially made on the application. However, I have found that the circumstances relating to the site are now different to those when the recommendation was made. In any event it is the resolution of the Council in relation to the putative reasons for refusal to which I must have regard and I have reached my conclusions on the basis of the evidence given to the Inquiry. That initial recommendation by officers does not carry substantive weight in my deliberations.

Benefits

59. The appellants highlight there are benefits to the scheme advocating that substantial weight should be given to the provision of open market housing, the Council say that this should be given moderate to significant weight however due to the 5-year HLS position and the Framework imperative to significantly boost the supply of housing I am of the view that substantial weight should be given to the provision of housing including the affordable units.
60. The benefits arising from construction investment and jobs associated with it are unquantified. However, paragraph 81 of the Framework makes clear that significant weight should be placed on supporting economic growth and productivity. Nonetheless, the temporary nature of construction inevitably means that the benefits are short term and, as a result, this leads me to conclude that such benefits would be moderate rather than significant. There

was no dispute that the provision of public open space and improvements in green infrastructure and the facilitation of public access to the land which is currently private should be attributed moderate weight and I have no reason to disagree with that conclusion. Moderate weight is attached to the provision of the surrogate site including provision of 10% BNG; and similarly moderate weight to the financial contributions to offsite infrastructure. All these benefits weigh in favour of the development.

Legal agreement

61. The Council and the appellants have reached agreement on the wording of two CIL compliant planning obligations to secure financial contributions towards education and library provision, affordable housing, a travel plan and the provision of a Locally Equipped area for Play (LEAP). At the Inquiry the Council confirmed that, subject to the conclusion of those agreements, reason for refusal five would be overcome. On that basis it was no longer contested at the Inquiry. I am satisfied that each sought obligation would meet the tests set out in Paragraph 57 of the Framework for planning obligations. As a result, I have taken the completed agreements into account.

Planning Balance

62. The starting point for any planning decision is Section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires decisions to be made in accordance with the development plan unless material considerations indicate otherwise. Development which would conflict with and undermine the strategy of an approved development plan and the Framework when taken as a whole would, in planning terms, be harmful.
63. Notwithstanding the proximity of the appeal site to a 'service village' which the JCS recognises has relatively good accessibility credentials, this is a speculative development on an undeveloped and wooded site protected by a TPO which is located outside the settlement limits of the village of Twyning. I have found that the development would not integrate well with the settlement and would be harmful to the character and appearance of the area leading to encroachment into the countryside in conflict with the JCS, the TLP and the TNP. Whilst that conflict would not affect a landscape designated as 'valued' it would nonetheless significantly affect the setting, scenic character, and visual quality of the village of Twyning. Additionally, and of no less importance, development would result in the loss of a significant number of protected, albeit young trees. I have found that permanent and irreversible harm would be caused to the local landscape immediately adjacent to the settlement edge and to the experience of users of the PROWs which cross the site. These are matters to which I attach considerable weight.
64. Development on the site would conflict with important strategic objectives of the Development Plan including the Neighbourhood Plan; a position which is supported by the Framework commitment in recognising the intrinsic character and beauty of the countryside and the protection of trees and woodland. These are matters which weigh heavily against the appeal scheme.
65. The proposal must also be assessed against the provisions of paragraph 11 d) of the Framework given that I have concluded the Council cannot demonstrate a 5-year supply for the delivery of housing. This is a material consideration, particularly so given the extent of the identified shortfall and is a matter to

which I must attach substantial weight. Even so, I have found that the harm from the scheme would significantly and demonstrably outweigh the benefits outlined above which include the significant contribution which the appeal scheme would make to the current housing shortfall. Even if I was to accept the Council's position on housing land supply, which I don't accept, and they could demonstrate a 5-year supply of deliverable housing sites, this would not have changed my conclusion that the appeal should be dismissed, and planning permission refused. As such the Framework considerations taken as a whole weigh heavily against the proposal and the totality of the material considerations does not justify making a decision other than in accordance with the development plan.

Conclusion

66. Taking all these matters together I have found nothing to alter my conclusion that the appeal should be determined in accordance with the development plan when taken as a whole. Consequently, the appeal is dismissed, and planning permission refused.

Mrs J Wilson

INSPECTOR

ANNEX A: APPEARANCES

FOR THE APPELLANTS:

Mr Killian Garvey, Counsel Kings Chambers instructed by Mr Oliver Rider

He called

- Mr Rider MSc MRTPI of Zesta Planning Limited Planning witness
- Mr Paul Barton MSc, BSc (Hons) MArborA, RArborA of Barton Hyett Associates Limited - Arboricultural Witness
- Mr Paul Harris CMLI of MHP Design Limited - Landscape Witness
- Mr Jeff Richards BA (Hons) MTP MRTPI of Turley - 5YR HLS and affordable housing Witness
- Mr Dominic Farmer BSc. (Hons) MSc MCIEEM, CEnv of Ecology Solutions on Ecology matters
- Mr Richard Thurling of Gowling Solicitors – Round table session on 106 matters.

FOR THE LOCAL PLANNING AUTHORITY:

Mr Jeremy Patterson One Legal instructed by Tewkesbury Borough Council

He called

- Ms Helen Morris BSc Dip TP MRTPI, Director (RCA Regeneration Ltd) - Planning witness
- Mr Richard Pestell, MPhil MRTPI Director of Planning (Stantec) – 5YR HLS witness
- Ms Claire Bromley BSc MSc Licentiate RTPI Senior Planning Policy Officer Tewkesbury Borough Council.
- John-Paul Friend, HND (LGD) BA Hons Dip LA CMLI Director (LVIA Ltd) Landscape witness
- Mr John Benjamin Holding. BSc FAA Arboricultural witness
- Mr Gary Spencer – Locum Solicitor to Tewkesbury Borough Council.
- Mr James Lloyd – Planning Team Leader Tewkesbury Borough Council

Other parties

Mr Simon Chaplin of Gloucester County Council

Mr Krzysztof Kwiatkowski of Gloucester County Council

Representors

- Mr Dr Herold
- Councillor Cate Cody - County Councillor
- Councillor Phillip Workman – Tewkesbury North and Twyning
- Councillor David J Lockett – Tewkesbury Parish Council
- Councillor Sztymiak - Tewkesbury North and Twyning
- Mr Roberts – Local resident
- Ms Helen Carver – Tewkesbury resident and volunteer for Gloucester Wildlife Trust

ANNEX B: Inquiry Documents

A following is a list of documents submitted during the Inquiry

- INQDoc1 - Appellants opening
- INQDoc2 Council opening
- INQDoc3 Bundle of documents from the appellants relating to Dr Herold's correspondence (received electronically)
 - i. Gowling WLG – Highway note
 - ii. Site Plan ref DWG No.9834-PLO1
 - iii. Letter from Dr Herold dated 2 January 2023
 - iv. Land Registry Title Plan GR149185
 - v. Official Copy of register of title GR149185
 - vi. Land Registry title plan GR269672
 - vii. Official copy of register of title – GR269672
 - viii. Highway authority search (101251017) [4][1]
- INQDoc4 Statement from Councillor Luckett (Parish Councillor)
- INQDoc5 Extract from Magic Map – supplied by the Council
- INQDoc6 Letter from the Forestry Commission regarding the repayment of the funding from the English Woodland Grant Scheme
- INQDoc7 Vale of White Horse Local Plan Part 1 Review document 2021
- INQDoc8 Site Visit Itinerary – agreed between the Council and the appellant
- INQDoc9 Asset of Community Value – DCLG Policy Statement 2011
- INQDoc10
 - i. Request from Inspector to Council on Housing Delivery Test (HDT) monitoring
 - ii. Response from Council re HDT monitoring
- INQDoc11 Email from Tewkesbury Borough Council updating the status of sites outlined in section 3 of the Planning Statement of Common Ground
- INQDoc12 List of qualifications of the appellants witnesses
- INQDoc13 Revised Section 106 agreement with Gloucestershire County Council - revision of Core Document CD 1.12
- INQDoc14 Revised Section 106 agreement with Tewkesbury Borough Council – revision of Core Document CD 1.11
- INQDoc15 Revised schedule of conditions
- INQDoc16 GCC Documents
 - i. County Matters statement of common ground
 - ii. Gloucester County Council – Planning Obligations (Education Libraries, Highways and Transportation Infrastructure) CIL compliance statement
 - iii. Gloucester County Council – Planning Obligations (Education Libraries, Highways and Transportation Infrastructure) CIL compliance statement Summary
- INQDoc17 Councils Closing submission
- INQDoc18 Appellants Closing submission