
Appeal Decision

Hearing held on 14 June 2016

Site visit made on 14 June 2016

by Kevin Gleeson BA MCD MRTPI

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

Decision date: 21 September 2016

Appeal Ref: APP/J1860/W/16/3144990

Field Ridge, Bromyard Road, Cotheridge, Worcestershire WR6 5LP

- 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 Mr. Peter Burgoyne of Burgoyne Property Investments Ltd against Malvern Hills District Council.
 - The application Ref 15/00708/OUT, is dated 15 May 2015.
 - The development proposed is described as outline planning application for the relocation of the commercial development (B1-B8 Uses) approved at Upper Howsen Farm, (under planning permission 08/00017/FUL renewed under 12/00376/PEX) from Upper Howsen Farm across to Field Ridge, with associated new access off the Bromyard Road, and car parking.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council has determined that there is no provision within planning legislation to address the relocation of a proposed use, approved on another site in the context of an outline planning application. Consequently, the Council's amended description of development which is agreed by the appellant is: outline application with all matters reserved except details of the access position onto the A44, for the erection of B1 / B8 development at Field Ridge following demolition of existing buildings and restoration of land at Upper Howsen Farm.
 3. The Council confirmed that planning consent 12/00376/PEX for the renewal of planning permission for B1-B8 uses at Upper Howsen Farm had been implemented and therefore remains extant.
 4. In response to the submission of comments by interested parties the appellant submitted a heritage statement relating to Rose Cottage dated 24 May 2016 and therefore outside of the regulation timetable. Following discussion at the hearing I agreed to accept the additional submission as, in doing so, no party would be prejudiced by its consideration.
 5. At the time the appeal was lodged the development plan comprised the saved policies of the Malvern Hills District Local Plan but by the time of the hearing the South Worcestershire Development Plan (the Development Plan) had been formally adopted in February 2016.
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Main Issues

6. The Council indicated that they would have refused the scheme had they been in a position to determine the application. My identification of the main issue at the hearing was questioned and in the light of the points made I identify two main issues. The first is whether the proposed development is in accordance with the development plan. The second is, if it is not in accordance with the development plan, whether there are any material considerations that indicate, that the determination should be made otherwise than in accordance with the plan, having particular regard to:
 - a) Employment generation;
 - b) The setting of the listed buildings at Upper Howsen Farm;
 - c) Effects on biodiversity; and
 - d) The principles of sustainable development.

Reasons

Whether the Proposed Development is in Accordance with the Development Plan

7. Annex D of the Development Plan categorises Cotheridge as a village in the open countryside. Development Plan Policy SWDP 2 states that in the open countryside, within which the appeal site lies, development will be strictly controlled and will be limited to a number of purposes including employment development in rural areas where Policy SWDP 12 applies. Development Plan Policy SWDP 12 seeks to protect existing employment sites and allows limited expansion and farm diversification in particular circumstances.
8. The appellant's primary case is that there are no relevant policies within the development plan which deal with the relocation of an existing employment site. Consequently the appellant argued that there cannot be a breach of the development plan and as the proposal accords with other technical matters in the development plan the proposal should be approved.
9. The appellant referred to the High Court Judgement in the case of *Wychavon District Council v Secretary of State for Communities and Local Government and Crown House Developments* (Document 2) in support of their position. Applying the approach of Coulson J, I find that there is a development plan in place and therefore my determination must be made in accordance with the plan unless material considerations indicate otherwise.
10. I find that that the development plan is not silent or out of date with regard to development in the countryside which I have identified as one of the main issues in this appeal and that policies SWDP 2 and SWDP 12 of the Development Plan are relevant in this regard. The proposal would not meet any of the criteria associated with these policies to justify employment development in the countryside. On the first main issue I conclude that the proposed development is not in accordance with the development plan and therefore there is a presumption against granting planning permission. On this basis it is necessary to consider whether there are any other material considerations which would outweigh the harm arising from the proposed development being in conflict with the development plan in respect of the

development strategy set out in Policy SWDP 2 and Policy SWDP 12 regarding employment in rural areas.

Material Considerations: Employment Generation

11. The appeal scheme would see the development of a total of approximately 1,672sq.m of new-build commercial development which would be a reduction of just over 150sq.m from that already approved at Upper Howsen Farm. The appellant considers that the proposed development would be of secondary attraction, suited to local occupiers which would be developed speculatively. Whilst employment generation benefits would accrue from the proposed development in its own right the appellant's main claim is that it provides a more appropriate site for commercial development than the Upper Howsen Farm site and therefore stands a greater possibility of securing tenants and being successful.
12. Together policies SWDP 2, SWDP 8 and SWDP 12 of the Development Plan make provision for the employment needs of the district. However, the appellant argued that the reasoned justification for Policy SWDP 12 supports further improvement of the economic prospects in the rural north and west of Malvern Hills beyond the main employment centres.
13. Assuming that conditions could be imposed to require the demolition of the existing buildings at Upper Howsen Farm, as shown on the submitted plans I attach limited weight to the benefits of developing the Field Ridge site in its place. This is based on Field Ridge being more attractive to potential occupiers and the site providing new build development rather than conversion which could provide greater flexibility for occupiers. I would only attach limited weight to the employment generation benefits on the basis that none of the evidence before me has provided adequate justification for the provision of employment land in place of that already approved at Upper Howsen Farm. Moreover, the benefit is in relation to a more advantageous location than Upper Howsen Farm rather than other alternative locations.
14. The appellant cites paragraph 28 of the Framework as being most relevant to the proposed development. However, proposals which aim to support a prosperous rural economy need to comply with the Framework as a whole. I consider this further below.
15. The appellant also suggests that substantial weight should be attached to the fall-back position that their commercial development in the countryside has already been approved at Upper Howsen Farm. As the farm buildings already exist and the proposal would involve their removal prior to the development of Field Ridge I attach minimal weight to this matter recognising that Development Plan Policy SWDP 12 D iii states that wherever possible existing buildings should be used to reduce the need for additional built development.

Material Considerations: The Setting of the Listed Buildings at Upper Howsen Farm

16. Consent has already been granted for the refurbishment of the existing buildings at Upper Howsen Farm. In the context of that decision the effect of the proposed development including the impact of the proposed use on the setting of two listed buildings and a curtilage listed building at the farm would have been addressed.

17. The significance of Upper Howsen Farmhouse and the associated hop barn derives from their qualities as an example of a linked range of post medieval to early modern farm buildings at the heart of an active farming concern. Their setting, which contributes to significance, is defined by their position within a rural landscape. The significance of Lower Howsen Farmhouse also derives from being a post medieval farmhouse and part of an active farming concern. Its immediate setting is defined by its position within a larger grouping of farm buildings and its wider setting by its situation within a rural landscape. The Council has confirmed that the re-use of the buildings for employment would not harm the setting of the listed buildings.
18. The removal of the buildings which form part of the setting of the listed buildings and the restoration of the land for agricultural use would be of benefit to the setting. Consequently the proposals would not be in conflict with Policy SWDP 24 of the Development Plan which addresses the management of the historic environment. The proposals would also be in line with the requirements of paragraph 131 of the Framework for new development to make a positive contribution to local character and distinctiveness and paragraph 137 which supports development to enhance the setting of heritage assets. Nevertheless, and in spite of the current poor condition of the established group of farm buildings which are proposed to be demolished, the buildings which form part of the setting have existed for many years and can be considered as an established part of the setting of the heritage assets. For this reason I attach limited weight to their removal.

Material Considerations: Effects on Biodiversity

19. The appellant cites a number of enhancements to local biodiversity which should be given weight in favour of the appeal proposals. Policy SWDP 22 states that development should, wherever practicable, be designed to enhance biodiversity. Section 11 of the Framework also addresses the conservation and enhancement of the natural environment. The planting of native woody species between the developed area and boundary hedgerows is seen as providing positive effects for local bat and bird populations. Whilst it is possible that such planting could have positive effects this would need to be seen in the context of the existing greenfield site being developed for commercial use. Consequently I would attach very limited weight to such measures.
20. The appellant also claims that planting the northern boundary of the site with native woody species and the inclusion of a balancing pond would improve connectivity and the breeding habitat for amphibians. At the hearing there was considerable uncertainty about whether a balancing pond was necessary and whilst the additional native woody species could be beneficial for amphibians I attach very limited weight to the proposal in the absence of clear evidence of the benefits.
21. With regard to the third element of biodiversity benefit cited by the appellant, namely minimising the potential disturbance to bats arising from external lighting I consider this to be an element of mitigation. Without the proposed development on the appeal site there would be no need for external lighting and therefore I attach no weight to this element.

Material Considerations: Principles of Sustainable Development

22. Policy SWDP 1 establishes the overarching development principles for the district taking account of the presumption in favour of sustainable development set out in the Framework. In addition, Annex D of the Development Plan establishes a hierarchy of settlements based on sustainability criteria which identifies their suitability to accommodate employment development.
23. As a village in the open countryside, Cotheridge is identified as having no key services and limited or no bus provision. In addition, the site is poorly served in respect of safe and convenient provision for cyclists and pedestrians. Notwithstanding its location adjacent to the A44 and therefore closer to bus stops than Upper Howsen Farm which could result in fewer journeys by car, the primary means of travel to the proposed development would be by private car. The proposals would therefore be contrary to Policy SWDP 4 of the Development Plan which seeks to encourage alternative modes of travel other than the private car and to policies SWDP 1 and SWDP 2 which aim to promote sustainable development in line with the objectives of the Framework.
24. The proposed development would fail to address the three dimensions of sustainable development. Notwithstanding the limited benefits identified, in environmental terms the proposal would encroach into the countryside and encourage car use and would therefore fail to enhance the natural environment; in social terms the proposal's isolation would fail to support communities in spite of attracting business, and in economic terms the proposed development would not constitute development in the right place to contribute to a strong economy in spite of delivering employment opportunities locally. As paragraph 8 states that the three dimensions should not be undertaken in isolation because they are mutually dependent I find that the proposed development would not be sustainable.

Other Matters

25. Concern was expressed by many residents in writing and at the hearing that the proposal would result in a danger to highway users. However, the evidence before me is that there is no adverse or unusually poor safety record in the vicinity of the appeal site. I am also mindful that the local highway authority raised no objection to the proposed development subject to conditions. I therefore find that there would be no material harm to highway safety arising from the proposals.
26. Interested parties also suggested that the appeal proposal would have an adverse effect on a designated heritage asset, namely the Grade II listed Rose Cottage to the west of the appeal site. Having considered the heritage significance of Rose Cottage and its setting I find that in spite of its proximity to the Cottage the proposed development would not cause harm to the conservation of the setting or the historical significance of this designated heritage asset particularly given the lack of intervisibility between the two sites. Therefore it would not conflict with Policy SWDP 24 which aims to ensure that development proposals do not harm the significance of a heritage asset or its setting.
27. The case was also made by interested parties that the proposed development would have adverse landscape and visual impacts. I am not convinced by the appellant's argument that the development would more or less fit in with the

scale, landform and pattern of the landscape by virtue of neighbouring commercial development already influencing the area and consent for an agricultural building. From my observations on site I consider that the physical impact of the development would be considerable and that landscape character would be adversely affected by the scale of development proposed on an existing greenfield site.

28. In terms of the visual effects of the proposed development the appellant indicates that there would be a neutral or low adverse effect. Again, based on my observations I consider that the effects would be adverse because of the scale of the proposed development and the prominence of the appeal site when viewed from a busy road. Consequently I find that the proposed development would have adverse landscape and visual impacts contrary to Policy SWDP 25 which requires development proposals to integrate with the character of the landscape setting which also weigh against the scheme.
29. Interested parties also raised concerns about the potential of the proposed development to result in flooding and the effect on surface water drainage. Based on the Flood Risk Assessment I find that the proposed development would be unlikely to result in an increased flood risk to the wider catchment area. Furthermore, neither the South Worcestershire Land Drainage Partnership nor the Lead Local Flood Authority raised objections to the proposals subject to conditions.
30. Residents have also raised a number of other concerns including the impact on public rights of way and the precedent of development. However, based on the information before me, these matters would not constitute reasons to dismiss the appeal.

Conclusion

31. The proposed development would conflict with policies SWDP 2 and SWDP 12 of the Development Plan by reason of inappropriate development in the open countryside. Other material considerations in support of the proposed scheme also need to be weighed as part of the balancing exercise. These comprise the employment generation effects of the proposed development compared to the approved scheme at Upper Howsen Farm, improvements to the setting of the listed buildings at Upper Howsen Farm and potential improvements to biodiversity. Nevertheless, in each case I attach no more than limited weight to each benefit and cumulatively these benefits are not sufficient to outweigh the harm to the countryside arising from the proposed development.
32. For the reasons given above, and having regard to all other matters raised, the appeal is dismissed.

Kevin Gleeson

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Philip Rawle	PRP Consultants Ltd
Charles Potterton	Potterton Associates
Duncan Coe	Cotswold Archaeology
Peter Burgoyne	Burgoyne Property Investments Ltd

FOR THE LOCAL PLANNING AUTHORITY

Stuart Castle	Malvern Hills District Council
Rosie Murray	Malvern Hills District Council

INTERESTED PARTIES

Robert Cattell	Local Resident
Alan Starkie	Local Resident
Michael Kelly	Local Resident

DOCUMENTS SUBMITTED AT THE HEARING

1. Notification of the Date and Venue for the Hearing submitted by the Council
2. High Court Judgment in the Case of Wychavon District Council v Secretary of State for Communities and Local Government and Crown House Developments [2016] EWHC 592 (Admin) submitted by the Appellant.
3. Extract from Malvern Hills District Local Plan – Adopted Plan July 2006 submitted by the Appellant.
4. Appellant's Schedule of Conditions.
5. Settlement Hierarchy Plan submitted by the Council.
6. Updated / Corrected Rose Cottage Setting Assessment submitted by the Appellant.
7. Photograph from Springfield, Lightwood Lane submitted by Mr. Starkie.