
Appeal Decision

Site visit made on 16 August 2016

by Jonathan Tudor BA (Hons), Solicitor (non-practising)

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

Decision date: 6 October 2016

Appeal Ref: APP/J1860/W/16/3150378

37 The Forge, A443 Eardiston, Eardiston, Worcestershire WR15 8JJ

- 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 planning permission.
 - The appeal is made by Mr Moss Davies against Malvern Hills District Council.
 - The application Ref 15/01562/FUL is dated 26 October 2015.
 - The development proposed is demolition of light industrial/storage outbuilding and construction of a new 2 bedroomed dwelling and creation of new access to The Forge.
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Decision

1. The appeal is allowed and planning permission is granted for demolition of light industrial/storage outbuilding and construction of a new 2 bedroomed dwelling and creation of new access to The Forge at 37 The Forge, A443 Eardiston, Eardiston, Worcestershire WR15 8JJ in accordance with the terms of the application, Ref 15/01562/FUL, dated 26 October 2015, subject to the attached schedule of conditions.

Application for costs

2. An application for costs was made by Mr Moss Davies against Malvern Hills District Council. This application is the subject of a separate Decision.

Procedural Matters

3. Subsequent to the original planning application, the South Worcestershire Development Plan (Development Plan) was adopted on 25 February 2016. As its adoption was prior to this appeal, both parties have submitted documentation in relation to the current Development Plan which is the basis on which the appeal must be considered.
4. The Council advises in its statement of case that had it been in a position to determine the application, it would have refused planning permission for reasons relating to (1) the location of the proposed development outside any development boundary and (2) the absence of a legal agreement to secure a contribution for affordable housing.

Main Issues

5. The main issues are:
 - whether the proposed development would be in a suitable location, having regard to local and national planning policies relating to development in the countryside; and,

- whether a contribution towards affordable housing should be made.

Reasons

Locational Suitability

6. The appeal site is to the rear and side of The Forge, a two storey residential dwelling in the rural village of Eardiston. A single storey corrugated iron and part timber clad outbuilding now used for storage purposes stands on the site. Access is via a steep single track driveway, shared with a public footpath, from the A443.
7. Policy SWDP 2 of the Development Plan seeks, amongst other things, to focus most development on urban areas and safeguard the open countryside, defined as land beyond any development boundary. Whilst the use of settlement or development boundaries are not mentioned in the National Planning Policy Framework (the Framework) or its associated Planning Practice Guidance (PPG), the fact that a Development Plan policy takes such an approach does not necessarily make it inconsistent with the Framework.
8. However, the relevant PPG¹ advises that though strategic planning through the Development Plan is important, all settlements can play a role in delivering sustainable development in rural areas. It goes on to say that blanket policies restricting housing development in some settlements and preventing others from expanding should be avoided unless their use can be supported by robust evidence.
9. Though the majority of the appeal site immediately abuts the development boundary, part of it, consisting of much of the existing access is within it. The land rises from the road so the plot is at higher ground level than The Forge and forms part of a raised rear garden area with a picnic table and lawn but somewhat dominated by the large storage outbuilding. The existing access track, the southern part of which lies within the development boundary, currently serves The Forge and the Old Post Office adjacent to it as well as two other dwellings, 34 and 35 Eardiston, to the east.
10. The appeal site is therefore in close proximity to a number of residential properties. Further to the west the formal development boundary of the village extends northwards reflecting development along Dumbleton Lane. These dwellings can be seen from and are to the north west of the appeal site. It is separated from the public footpath to the east and the open countryside to the north by a post and wire fence and hedges.
11. It has the appearance of a domestic garden area, albeit the storage building also occupies the site. The Council also refers to it as a private residential garden in its statement of case when discussing the definition of previously developed land. If it considers the appeal site to be a private residential garden it is difficult to understand how it can simultaneously view development on it as a threat to the open countryside. For the reasons given above, I consider that the appeal site has more affinity with the settlement of Eardiston than the open countryside and agricultural fields beyond.
12. Furthermore, it seems to me that SWDP 2 is concerned with new development, where there is some increase in the built form and a tangible incursion into the

¹ Planning Practice Guidance: Rural Communities ID: 50-001-20160159

open countryside causing harm. The proposed development is for a single storey dwelling replacing an existing single storey building on a similar footprint so there is no increase in the built form or incursion.

13. The Framework suggests in paragraph 53 that local planning authorities should consider the case for setting out policies to resist inappropriate development in residential gardens, for example, where development would cause harm to the local area. However, no such policy is cited by the Council from the Development Plan and, in any event, I cannot see that there would be an adverse effect on the area.
14. SWDP 2 aims to control development in the open countryside limiting it to exceptions such as dwellings for rural workers, replacement dwellings and house extensions. As part of the appeal site being the access track is largely within the development boundary and in view of the other reasons explained above, I do not consider the appeal site to be in the open countryside and, therefore, the requirement for it to meet one of the exceptions does not apply.
15. Turning to the location in a broader sense, the Council's view is that the appeal site is functionally isolated. Paragraph 55 of the Framework similarly discourages new isolated homes in the countryside unless there are special circumstances. The term 'isolated' is not defined in the Framework so it is reasonable to rely on its everyday meaning which is far away from other places, buildings or property i.e. lonely or remote.
16. It has already been established that the proposed development is located in a village, abuts and is part within the development boundary and is close to other residential dwellings. Eardiston is a Category 3 village assessed by the Development Plan as having at least one key service, in addition to a parish or village hall and access to public transport.
17. The Council comment that the key service is employment at the garage/coach company, which is itself the subject of a planning application which indicates that the company wishes to relocate outside the village. As it is not known what the outcome of that application will be or whether the company will proceed with those plans, I do not give significant weight to that point. Whilst the range of services within the village is limited, there is a bus stop on the main road not far from the appeal site with a regular bus service to the nearby market town of Tenbury Wells and the city of Worcester with their range of services.
18. According to the Council there would be no option for cycling but the appellant disagrees and given that there is an available road network which could be used by cyclists, I prefer the appellant's view. In any event, even if it is accepted that the majority of journeys would be by private motor car, which is a reasonable assumption, the number of additional journeys generated by one two bedroom dwelling would be minimal. Therefore, I do not consider the location of the appeal site to be isolated.
19. Planning decisions must be determined in accordance with the Development Plan unless material considerations, including the Framework, indicate otherwise. The golden thread running through the Framework is a presumption in favour of sustainable development. There are three dimensions to sustainable development detailed in the Framework and reflected in Policy SWDP 1 of the Development Plan: environmental, economic and social.

20. The Council recognises that demolition of the existing building would result in some environmental improvement. I share the appellant's view that its replacement with an oak-framed, softwood weatherboard, single storey dwelling would enhance the immediate environment. In economic terms, the development would provide some benefits in the form of short term employment during the construction phase and in the purchase of materials. The future occupants would also be likely to contribute to the local economy. From a social perspective, an additional house would make a small contribution to the housing stock with a modern energy efficient home, though the Council can demonstrate a 5-year supply of housing. As the Council recognise, future residents could also support local services and potentially add to the available workforce. Though I accept that the benefits would inevitably be limited given that the development would be for one dwelling, I still consider them relevant and give them some weight.
21. The rigid application of Policy SWDP 2 in relation to the development boundary in this particular context is inappropriate, given that part of the appeal site is, in any case, within the development boundary and the Council do not explain what harm would be caused to the open countryside by the development. It is the combination of the factors set out above that leads me to conclude that the proposed development is in a suitable location and would not harm the open countryside. It follows that it is not contrary to the objectives of policies SWDP 1 or SWDP 2 of the Development Plan which, amongst other things, aim to reflect a presumption in favour of sustainable development and safeguard and wherever possible enhance the open countryside. Neither does it conflict with the similar aims of paragraphs 7 or 17 of the Framework.

Affordable Housing Contribution

22. The Council argue that Policy SWDP 15 of the Development Plan requires a contribution to be made towards local affordable housing. It accepts that this requirement did not exist at the time the planning application was submitted as this was prior to the adoption of the new Development Plan. The appellant does not accept that a contribution is appropriate.
23. As both parties acknowledge, on 11 May 2016 the Court of Appeal² overturned a previous High Court challenge to the Written Ministerial Statement (WMS) of 28 November 2014. That recent decision and subsequent order has restored the WMS as a material consideration to be taken account of in planning decisions. The relevant Planning Practice Guidance (PPG)³, which has been updated to reflect the WMS, indicates that affordable housing and tariff style contributions should not be sought from small scale developments of fewer than 10 units subject to limited exceptions.
24. The WMS represents Government policy, and is reflected in the PPG, and is to be read alongside the Framework. It is a material consideration which must be given appropriate weight. It is clear that the thrust of Government policy is to promote house building and to ensure that smaller schemes are not discouraged by requests for social infrastructure and affordable housing contributions. Though the Council refers to the recent examination and

² Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council C1/2015/2559; [2016] EWCA Civ 441

³ Planning Practice Guidance: Planning Obligations

adoption of its Development Plan, that was prior to the Court of Appeal judgement referred to above which changed the position.

25. There may be exceptions, as with any planning policy, to national policy justified by local circumstances. The Council state that SWDP 15 and its sliding scale approach to affordable housing contributions reflects such local circumstances. I consider that this blanket approach to viability is not a local circumstance, by itself, sufficient to outweigh the clear intention of national policy on the facts of this appeal.
26. Therefore, I conclude that in the particular circumstances set out above, Government policy as expressed in the WMS and PPG outweighs Policy SWDP 15 of the Development Plan and seeking a contribution towards affordable housing would not be appropriate. Policy SWDP 62 is concerned with implementation of the Development Plan as a whole and does not have specific relevance to this issue.

Conditions

27. I have considered the various planning conditions that have been suggested by the Council, amending them if necessary. A condition setting a time limit for the commencement of the development is a statutory requirement. For the avoidance of doubt and in the interests of proper planning, a condition requiring the development to be carried out in accordance with approved plans is appropriate. Conditions regarding materials, boundary treatments and landscaping are necessary to safeguard the character and appearance of this rural area. A condition in respect of drainage is necessary to ensure that the drainage arrangements are adequate. Conditions relating to parking, access arrangements, turning areas and visibility splays are required in the interests of highway safety. Those in connection with micro generation and water management are necessary to reduce carbon emissions and water consumption in accord with the Development Plan. A condition concerning contamination is required to ensure risks from land contamination are minimised and to accord with the Development Plan.

Conclusion

28. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

Jonathan Tudor

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be commenced before the expiration of three years from the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 1448.1B, 1448.2D, 1448.3 and 1448.4 unless otherwise required by conditions attached to this permission.
- 3) Prior to the commencement of development samples and trade descriptions of the external facing and roofing materials to be used in the construction of the development hereby permitted shall be submitted to and approved in writing by

the local planning authority. Development shall be carried out in accordance with the approved detail.

- 4) Development shall not take place until a scheme of surface water drainage, which shall include proposals for sustainable drainage, (SuDS), has been submitted to, and approved in writing by the local planning authority. The approved scheme shall be completed before the development is first brought into use, or in accordance with a timetable to be submitted to and agreed in writing by the Local Planning Authority.
- 5) The development shall not begin until parking for site operatives and visitors has been provided within the application site in accordance with details to be submitted to and approved by the local planning authority and such provision be retained and kept available during the construction of the development.
- 6) Prior to the first occupation of the dwellings hereby approved secure parking for 2 cycles to comply with the County Council's standards shall be provided within the curtilage of the dwelling and these facilities shall thereafter be retained for the parking of cycles only.
- 7) The development hereby permitted shall not be brought into use until the access, turning area and parking facilities shown on the approved plans have been properly consolidated, surfaced, drained and otherwise constructed in accordance with details to be submitted to and approved in writing by the local planning authority and these areas shall thereafter be retained and kept available for those users at all times.
- 8) Before any other works hereby approved are commenced, visibility splays shall be provided from a point 0.6m above ground level at the centre of the proposed access to 'The Forge' and 2.4 metres back from the near side edge of the adjoining carriageway, (measured perpendicularly), for a distance of 43 metres in each direction along the nearside edge of the adjoining carriageway. Nothing shall be planted, erected and/or allowed to grow on the triangular area of land so formed which would obstruct the visibility described above.
- 9) Prior to the use of the proposed vehicular access to 'The Forge', the existing vehicular access from the private driveway to the parking area shall be permanently closed. Details of the means of closure and reinstatement of this existing access shall be submitted to and approved in writing by the local planning authority prior to the commencement of work on the development hereby approved.
- 10) Prior to the commencement of the development hereby permitted engineering details of the proposed access shall be submitted to and approved in writing by the local planning authority, and the development shall not be occupied until the scheme has been constructed in accordance with the approved details.
- 11) Prior to the commencement of development details of the boundary treatment to be erected shall be submitted to and approved in writing by the local planning authority. These details shall include a plan (at a minimum scale of 1:500) detailing the position of all proposed boundary treatments and annotated or accompanied by a schedule specifying the type, height, composition and appearance of boundary treatments throughout the site. The approved boundary treatments shall be erected before the development is first brought into use and thereafter retained in that form, notwithstanding the provisions of Schedule 2, Part 2 of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking and re-enacting that Order with or without modification).

- 12) Prior to the commencement of development a scheme of landscaping shall be submitted to and approved in writing by the local planning authority. The landscaping scheme shall include a plan detailing the disposition of planting, cross referenced to a schedule listing the species, size and number of plants proposed. The approved scheme shall be carried out concurrently with the development and completed prior to the first occupation of the development. If within a period of five years from the date of the planting of any tree planted pursuant to this condition that tree, or any tree planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree of the same species and size as that originally planted shall be planted at the same place, unless the local planning authority gives its written approval to any variation.
- 13) Prior to the commencement of development a scheme to demonstrate on site micro generation to meet at least 10% of the households predicted energy requirements from renewable or low carbon sources equivalent shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and retained hereafter.
- 14) Prior to the commencement of development a water management scheme to demonstrate that the daily non-recycled water use per person will not exceed 110 litres per day shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and retained hereafter.
- 15) In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken in accordance with DEFRA and the Environment Agency's 'Model Procedures for the management of Land Contamination, CLR 11' and where remediation is necessary a remediation scheme must be prepared and approved in writing by the local planning authority in advance of the scheme commencing. Following completion of measures identified in the approved remediation scheme a verification report must be prepared, which is subject to the approval in writing of the local planning authority prior to development commencing other than that required to be carried out as part of an approved scheme of remediation.