
Appeal Decision

Site visit made on 14 September 2016

by B Bowker Mplan MRTPI

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

Decision date: 10 October 2016

Appeal Ref: APP/J1860/W/16/3152030

Tansy Cottage, Worcester Road, Worcestershire, Hanley Swan WR9 0EA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr C Smith against the decision of Malvern Hills District Council.
 - The application Ref 16/00279/OUT, dated 3 February 2016, was refused by notice dated 23 May 2016.
 - The development proposed is an outline application for the erection of a single dwelling with all matters reserved except access.
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Decision

1. The appeal is allowed and outline planning permission is granted for the erection of a single dwelling with all matters reserved except access, at Tansy Cottage, Worcester Road, Worcestershire, Hanley Swan WR9 0E, in accordance with the terms of the application Ref 16/00279/OUT, dated 3 February 2016, subject to the conditions in the attached schedule.

Procedural matters

2. The proposal is for outline planning permission with all matters reserved apart from access. Appearance, landscaping, layout and scale are reserved for later consideration and the appeal has been determined on this basis.
3. Following the Court of Appeal's judgment of 11 May 2016¹, the Council have confirmed they no longer seek a contribution towards affordable housing. As such, this decision will focus on the main issue below.

Main Issue

4. The main issue is whether the proposal would result in a sustainable pattern and form of development, having particular regard to local and national planning policy and the effect on the character and appearance of the area.

Reasons

5. The proposed dwelling would be located in part of the rear garden of Tansy Cottage. The site is relatively level and surrounded by trees, vegetation and fields to its north and further east, Tansy Cottage to the south, and Hanley Swan to the west. The site is located adjacent the settlement boundary of Hanley Swan as defined by South Worcester Development Plan Policy (SWDP) SWDP 2 and therefore for planning purposes is located in the open countryside.

¹*West Berkshire District Council and Reading Borough Council v Department for Communities and Local Government* [2015] EWHC 2222 (Admin).

6. Policy SWDP 2 states that the Council's development strategy and site allocations are based on a number of principles, which of particular relevance to the proposal is to safeguard and where possible enhance the open countryside. SDWP Policy 2 part C notes that development in the open countryside will be strictly controlled, but does note a number of exceptions. The proposal would fail to meet any of the noted exceptions.
7. However, National Planning Policy Framework (the Framework) paragraph 47 seeks to significantly boost the supply of housing. In addition, paragraph 55 of the Framework states housing in rural locations should be located to enhance or maintain the vitality of rural communities and not occupy an isolated location.
8. During my site visit, I observed that the site is substantially enclosed by an orchard to the north that is bounded by hedgerow, and by large trees and established vegetation along the site's western boundary. The proposal would not protrude into the adjoining areas of trees and vegetation and would be sited in an area that has the appearance of a well-kept domestic garden with detached single storey garage. I also saw the rear garden of St Marys Villa along the site's eastern boundary, with outbuildings and the linear layout of properties continuing to the north. With properties to the south and west, the proposal would not occupy an isolated location.
9. With the above in mind, I do not consider that the proposal's resultant loss of garden area would harm the character of the open countryside and settled pastoral farmlands to the north and east of the site. The surrounding vegetation would reduce the visibility of the dwelling, whilst based on the indicative drawings, its siting would be in keeping with the pattern of development in the immediate area. Additional design details, including appearance and landscaping, would further ensure that the proposal would blend into its surroundings.
10. In summary, I acknowledge the proposal is located outside the settlement boundary of Hanley Swan and would not meet the exceptions noted in Policy SWDP 2 for development in the countryside. However, I am mindful of paragraphs 47 and 55 of the Framework outlined above. Moreover, based on my reasoning in the preceding paragraphs, the proposal and its modest scale would not conflict with the primary purposes of Policy SWDP 2 relating to safeguarding the open countryside and would comply with SWDP Policies 21 and 25.
11. In addition, although modest in scale, a number of benefits are associated with the proposal including its contribution to housing supply and creation of construction work. Also, the Council consider the proposal's location sustainable and in this respect the proposal would help support services and facilities in Hanley Swan.
12. Therefore, I conclude that the proposal would result in a sustainable pattern and form of development, having particular regard to local and national planning policy and the effect on the character and appearance of the area. Consequently, the proposal would meet the requirements of Policies SWDP 2, 21 and 25 which seek to safeguard the open countryside and ensure that development integrates into its landscape setting.

Conditions

13. The conditions set out in the accompanying schedule are based on those suggested by the Council. Where necessary, I have amended the conditions to avoid repetition and in the interests of precision and clarity as per advice given in the Planning Practice Guidance.
14. A condition requiring the submission of reserved matters is required in view of the outline nature of the application. This reserved matters condition would require consideration of appearance, landscaping and layout which would include details such as surfacing, boundary treatment and planting. I have imposed a condition specifying the relevant drawings as this provides certainty.
15. A condition requiring parking and turning areas to be approved and completed prior to occupation of the dwelling is included for highway safety purposes.
16. To limit disturbance to surrounding neighbours, the Council's suggested condition relating to vehicular parking details for site operatives and demolition and construction times is included. Conditions relating to archaeological work and soak away details are necessary based on comments from the Council's Archaeologist and Drainage Engineer respectively. Details of tree protection measures are necessary in the interests of the character and appearance of the surrounding area.
17. Without a copy of the relevant policies, I cannot conclude that the Minister's transitional arrangements² requiring policy to reference the Code for Sustainable Homes have been met. Therefore, a condition requiring details of sustainability measures is not attached. Nonetheless, these matters would be addressed at the Building Regulations stage.
18. Similarly, without copies of the relevant policies and secure bicycle parking standards I cannot justify including the conditions relating to broadband and cycle storage.
19. The National Planning Practice Guidance advises that conditions restricting permitted development rights should only be used in exceptional circumstances. I have not been provided with clear evidence or justification to remove permitted development rights, and therefore I have not included this condition.

Conclusion

20. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should be allowed subject to the attached schedule of conditions.

B Bowker

INSPECTOR

² Written Ministerial Statement, 25 March 2015.

Schedule of conditions

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: 1817 1000c, 1817 1100c.
- 5) Prior to the first occupation of the dwelling hereby permitted space shall be laid out within the curtilage of the property for car parking and vehicular turning facilities to enable vehicles to park and turn so that they may enter and leave the application site in a forward gear. The parking and turning areas shall be properly consolidated, surfaced and drained in accordance with details to be submitted to and approved in writing by the Local Planning Authority and these areas shall not thereafter be used for any other purpose than the parking of vehicles.
- 6) 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.
- 7) No development shall take place until a soak away test has been carried out in accordance with BRE Digest 365, or such other guidance as may be agreed in writing by the Local Planning Authority. The results of the test shall be submitted to and agreed in writing by the Local Planning Authority and the agreed recommendations shall be implemented in full prior to the occupation of the dwelling hereby permitted.
- 8) No development shall take place until details on the location of any proposed soakaway have been submitted to and agreed in writing by the Local Planning Authority. Any soakaway should be located no less than 5m from any building or sub-structure and 2.0m from a site boundary. If soakaway drainage is not possible on this site, an alternative method of surface water disposal should be submitted for approval. The agreed recommendations shall be implemented in full prior to the first occupation of the development.
- 9) A detailed plan showing the levels of the existing site and the precise floor slab levels of the new dwelling, relative to the existing development on the boundary of the site, shall be submitted to and approved in writing by the Local Planning Authority as part of the reserved matters prior to the commencement of the development.
- 10) Demolition or construction works shall take place only between 07.30 – 18.00 hours on Mondays to Fridays and 08.00 – 13.00 hours Saturdays,

and shall not take place at any time on Sundays or on Bank or Public Holidays.

- 11) No demolition, site clearance or building operations of any type shall commence until a protective fence (of at least 2 metres in height and in all other respects in accordance with BS 5837 (2012) Trees in Relation to Design, Demolition and Construction and previously approved in writing by the Local Planning Authority), has been erected around the trees to be retained within the site and around those trees outside the site whose Root Protection Areas (RPA) (as defined in BS 5837 (2012)) fall within the site, at the outer limit (or beyond) of the their RPA or in a position agreed in writing by the Local Planning Authority. This tree protective fencing should remain in place until all construction and associated ground-works have been completed.
- 12) No materials shall be stored, temporary buildings erected or ground levels altered within the Root Protection Area (RPA) (as defined in BS 5837 (2012) Trees in Relation to Design, Demolition and Construction) of any tree retained on site or of any tree beyond the site perimeter whose RPA lies within the site, unless agreed in writing by the Local Planning Authority.
- 13) No development shall take place until a programme of archaeological work including a Written Scheme of Investigation, has been submitted to and approved by the local planning authority in writing. The scheme shall include an assessment of significance and research questions; and:
 - a) The programme and methodology of site investigation and recording.
 - b) The programme for post investigation assessment.
 - c) Provision to be made for analysis of the site investigation and recording.
 - d) Provision to be made for publication and dissemination of the analysis and records of the site investigation
 - e) Provision to be made for archive deposition of the analysis and records of the site investigation
 - f) Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.
- 14) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under condition no 10 and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.