The Planning Inspectorate

Appeal Decision

Site visit made on 24 October 2016

by H Baugh-Jones BA(Hons) DipLA MA CMLI

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

Decision date: 8th November 2016

Appeal Ref: APP/J1860/W/16/3155541
Land Adjoining Brookmead, Pendock GL19 3PG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr W Preston against the decision of Malvern Hills District Council.
- The application Ref 15/01776/FUL, dated 2 December 2015, was refused by notice dated 1 February 2016.
- The development proposed is 4 no. new dwellings with 2 no. access points.

Decision

1. The appeal is allowed and planning permission is granted for 4 no. new dwellings with 2 no. access points at Land Adjoining Brookmead, Pendock GL19 3PG in accordance with the terms of the application, Ref 15/01776/FUL, dated 2 December 2015, subject to the conditions set out in the Schedule to this decision.

Procedural matters

2. The description of the proposed development given in the heading above has been taken from the appeal form as it is more comprehensive than that given on the application form.

3. Since determining the application, the Council has adopted the South Worcestershire Development Plan (February 2016) (SWDP), the policies of which replace those in the Malvern Hills District Local Plan. Polices from the SWDP are referenced in the Council's reasons for refusal as emerging policies and I have not been made aware of any significant changes to those now adopted. I am therefore satisfied that they can be taken into account in my decision without prejudicing anyone's case.

4. Due to the recent changes made to Planning Practice Guidance (PPG), the Council has confirmed that its fourth reason for refusal related to the provision of an affordable housing contribution, has been withdrawn.

Main Issues

5. The main issues in this appeal are:

   - whether the appeal site would be a suitable location for housing having regard to the development plan and national policies

   - the effects of the proposal on the area's landscape character

- its effects on protected species
- the effects on flooding

Reasons

6. The appeal site comprises a roughly rectangular area of land with trees and overgrown hedgerows around its boundaries. It is currently occupied by a small dilapidated shed type building located close to the southern boundary and there are a number of disused vehicles parked around it. The land is generally flat and mostly overgrown with a small, centrally located watercourse running approximately north-south and which meets up with a relatively deep ditch along the site's southern boundary.

Location of housing

7. Policy SWDP 1 sets out the Council's overarching approach to sustainable development. Policy SWDP 2 sets out a settlement hierarchy that seeks to locate most housing within and around Worcester and in the other urban areas. Pendock provides some local services and facilities and is therefore defined as a category 3 village within the hierarchy. Policy SWDP 2 sets out that such settlements are suited to accommodate market and affordable housing needs. The policy sets out that windfall sites will be assessed against the hierarchy.

8. Whilst the appeal site lies outside the defined village boundary, the proposal would provide an appropriate level of market housing in a category 3 village. It would also reflect the government's aim to locate housing where it will enhance or maintain the vitality of rural communities and boost significantly the supply of housing. This carries considerable weight. The village has a shop, post office, school and church all of which are within reasonable walking distance of the site.

9. I recognise that the site lies along a relatively busy, unlit road and there is no pavement along its section that passes the site. However, the distance from the site to Pendock Cross is relatively modest and within a 30mph speed limit with reasonably good visibility in both directions. Drivers and pedestrians would therefore be aware of each other's presence and I consider the situation would be acceptable. Taking the above into account, the proposed dwellings would not be isolated from the services and facilities in the village and the appeal scheme would make a useful contribution to supporting its overall economic and social vibrancy.

10. Policy SWDP 2 states that sites of an appropriate scale are allocated in category 3 villages to address the need for housing and support local services. However, the Council has not provided any information on land allocated within Pendock. Moreover, there is no certainty that allocated sites will be built out. I therefore consider that the appeal site would be reasonably well located to local services and facilities and the scale of development proposed would be appropriate to the scale of the village. For these reasons, I am not persuaded that the appeal scheme would prejudice the development plan strategy for housing as a whole.

11. This view is consistent with that of a recent appeal decision[1] relating to another site in Pendock at Brookend. It is clear that the Brookend Inspector found

[1] Ref APP/J1860/W/15/3135877

conflict with Policy SWDP 2 but judged that the scheme amounted to sustainable development. I have nothing before me to refute the Council's assertion that it has a 5 year supply of deliverable housing land. However, there is nothing in national policy that sets such a supply as a maximum and I have already found that the appeal scheme would contribute to the district's overall housing supply and accord with the government's objectives for increasing the amount of available housing.

12. Amongst other things, Policy SWDP 4 requires development to minimise travel demand and offer sustainable travel choices. The Council has put to me that the site is located away from the nearest urban area and thereby the proposed dwellings would be isolated from key services and facilities. Clearly, in the absence of a regular bus service, the new dwelling's occupants would be reliant on the car for travelling to the major centres to access services and facilities and for work. However, the development plan clearly envisages that Pendock will accommodate new housing development and, in my view, the modest scale of the proposal would not jeopardise the development plan strategy set out in Policy SWDP 2 for the focus of most development or the overall transport objectives as expressed in Policy SWDP 4.

13. Notwithstanding this, the National Planning Policy Framework (the Framework) seeks to promote sustainable transport, the government recognises that different polices and measures will be required in different communities and opportunities to maximise sustainable transport solutions will vary from urban to rural areas. Given that only four dwellings are proposed, I am not convinced that the likely resulting number of car journeys would be inconsistent with those that could reasonably expected in a rural area such as this.

Landscape character

14. The proposed dwellings would be sited next to an existing residential property and there is also a dwelling opposite the current site entrance. There are also a number of dwellings dotted along the B4208 a short distance to the south-east. Taking this into account with the combination of the existing building, parked vehicles and the substantial entrance gates of somewhat urban appearance, the site shares a greater affinity with the built-up area than to the surrounding open countryside.

15. The site is located to the south west of Pendock Cross, along which development is loose-knit and sporadic. This pattern is broadly typical of other areas within the settlement where development spreads out in generally linear form along the various converging roads and lanes. Although there is no clear centre to the village, the more tightly knit areas of development are located generally around Pendock Cross.

16. The proposed development would be much more tightly knit and regimented than the arrangement of nearby dwellings and development elsewhere in the village, where it spreads out away from Pendock Cross. The appeal scheme would therefore result in a small but pronounced concentration of dwellings along this part of the B4208. However, the linear form of development proposed, stretching away along the road would be broadly reflective of the overall pattern of development in Pendock. I therefore consider that, in the overall context, the scheme would be acceptable. Furthermore, the site is well-contained by existing vegetation and the proposal would not breach any discernable field boundary.

17. For the above reasons, the proposal would be in general accordance with SWDP Policy 21 that requires development to integrate with its surroundings through its siting and layout, relationship to other development and respect for the identity and character of settlements. I also consider it to be in accordance with SWDP Policy 25 that has similar objectives but in relation to overall landscape setting. The proposal also therefore accords with the *Landscapes of Worcestershire Landscape Type Advice Sheet for Settled Farmlands with Pastoral Land Use*.

Protected species

18. SWDP Policy 22 seeks to protect biodiversity and reflects statutory legislation relating to protected species and the Framework objective to conserve and enhance the natural environment. The appellant has undertaken a Phase 1 habitat survey. However, this has overlooked the presence of the central watercourse.

19. I note the comments of the Worcestershire Wildlife Trust and, in particular, the recognition that such an omission is not determinative of there being protected species on the site. I also note the absence of data within the survey in relation to land close by but within the boundary of Gloucestershire. However, I am satisfied that the retention of the watercourse and the 0.5 km data search distance from the site are sufficient in this case to ensure that there would be no resulting harm to protected species. In terms of this main issue, the proposal would accord with SWDP Policy 22, statutory legislation and the Framework.

Flooding

20. Flooding from any source may be a reason to refuse planning permission. The appeal site is identified as being within Flood Zone 1, within which Planning Practice Guidance is clear that it is to these areas, which development should be steered. However, information from the Environment Agency and within the South Worcestershire Strategic Flood Risk Assessment (SFRA) identifies that the watercourse running through the site is at risk of flooding. The appellant has submitted a Level 2 Flood Risk Assessment (FRA)[2], which I consider to be fit for purpose, proportionate to the degree of flood risk and appropriate to the scale, nature and location of the proposed development. The report identifies that the site does indeed fall within Flood Zone 1 but that there are small pockets that are within Flood Zone 2.

21. Nevertheless, the proposed dwellings would be wholly within Flood Zone 1 and, on the basis of the evidence before me, I am satisfied that the site would be suitable for residential development. However, there would be some reliance on the measures proposed in the FRA to ensure that the development would not be affected by flooding or that it would increase flood risk.

22. The Council's concerns relate to the perceived inadequate access for maintenance of the watercourse between it and the proposed dwellings either side. My attention has been drawn to information from the South Worcestershire Land Drainage Partnership (SWLDP) which advises that, on new developments, buffer strips of a minimum 8m width should be maintained along the bank tops of watercourses.

[2] Robert West Consulting Engineers Level 2 Flood Risk Assessment Ref 5478/001/R01, November 2015

23. The amended plans show an area of stand-off between the watercourse and the proposed dwellings either side of 2.2m and 3.1m respectively. This would therefore be in breach of the SWDLP advice. However, it is unclear as to the basis on which this advice is given, and it appears to me to be somewhat generic. Moreover, there is no development plan policy that requires buffer strips of 8m. Rather, SWDP Policy 29 states that development proposals should, amongst other things, "secure adequate maintenance access". It is not specified what this should be or how considerations of what constitutes 'adequate' are to be assessed.

24. However, a width of 3.1m would be sufficient to allow small excavator plant to access the length of the watercourse between dwellings and I consider this to be proportionate to the size of the watercourse. I am therefore satisfied that the proposal would provide for adequate maintenance access in accordance with the requirements of SWDP Policy 29.

Conditions

25. I have had regard to the various conditions suggested by the Council, having also had regard to paragraph 206 of the Framework and PPG. The conditions imposed are based on those suggested but with some variation in the interests of clarity.

26. I have imposed a condition specifying the relevant drawings as this provides certainty. To ensure the appearance of the development is satisfactory, I have imposed a condition relating to materials. However, this does not need to be a pre-commencement condition. Because the finished built levels are critical in relation to flooding, a condition requiring their submission and approval is necessary. A condition relating to boundary treatment is necessary in the interests of neighbouring amenity. However, it is not necessary to include a reference to permitted development rights. I have imposed a suitable condition to ensure that sustainability measures are incorporated into the development.

27. Given the proximity of residential properties, I have limited works on site to certain times and days. In the interests of protecting the water environment and minimising flood risk, a drainage condition is necessary. Whilst I consider an archaeological condition to be necessary, given the scale of the development proposed, I have imposed a less onerous version than that suggested. In the interests of highway safety, I have imposed conditions relating to visibility splays, the laying out of the accesses, vehicular circulation areas and a construction method statement. However, the reasons for the suggested condition relating to the construction of a vehicular access are unclear and, in any case, this is adequately covered by these other conditions. In the interests of maintaining the enclosed nature of the site, I consider a condition to be necessary relating to tree protection.

28. A landscaping condition is necessary in the interests of the character and appearance of the area. To protect bats, a condition is imposed relating to mitigation measures. I have imposed a condition relating to broadband provision in order to give future occupiers greater flexibility for home working. I note the suggested condition relating to secure cycle parking and have imposed a condition accordingly, in the interests of encouraging their use. I do not consider the exceptional circumstances exist to justify the removal of

permitted development rights and no strong justification has been provided for the imposition of such restrictions.

Conclusion

29. Whilst fully recognising the breach of Policy SWDP 2, I consider that the proposal would be reasonably well located to support local services and facilities and it would add to the overall supply of housing. The development would not harm landscape character or increase flood risk. Furthermore, I have not found any clear evidence to indicate that it would harm protected species. Consequently, I consider the proposal accords with the development plan as a whole and amounts to sustainable development.

30. For the above reasons and having had regard to all other matters raised, the appeal succeeds.

Hayden Baugh-Jones

Inspector

SCHEDULE OF CONDITIONS

1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the following approved plans: Proposal for 4 new dwellings Drawing No. 3815s Rev01; Proposed houses Drawing No. 3815bl Rev02; Proposed Houses - Plots 1 and 3 Drawing No. 3815a; Proposed Houses - Plots 2 and 4 Drawing No. 3815b 2.

3) No development above slab floor level shall commence until details / samples of the materials to be used in the construction of the external surfaces of the dwellings hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details / samples.

4) No development shall take place until full details of the finished levels, above ordnance datum, of the ground floors of the proposed buildings, in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.

5) The dwellings hereby permitted shall not be occupied until there has been submitted to and approved in writing by the local planning authority, a plan indicating the positions, design, materials and type of boundary treatment to be erected. Development shall be carried out in accordance with the approved details before any part of the development is first occupied and shall be retained and maintained thereafter.

6) Prior to the commencement of development, details of sustainability measures (including energy, waste, recycling and water management) to be incorporated into the design of the dwellings hereby permitted, to reduce energy usage and running costs for future occupiers shall be submitted to and approved in writing by the local planning authority. The approved details shall be implemented and retained thereafter.

7) Demolition or construction works shall take place only between 0730-1800 on Monday to Friday and only between 0800-1300 on Saturdays, and shall not take place at any time on Sundays or on Bank or Public Holidays.

8) No building hereby permitted shall be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
   i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
   ii) include a timetable for its implementation; and,
   iii) provide, a management and maintenance plan for the lifetime of the development which shall include arrangements to secure the operation of the scheme throughout its lifetime.

9) The developer shall afford access at all reasonable times to any archaeologist nominated by the local planning authority, and shall allow that person to observe the excavations and record items of interest and finds.

10) Prior to the commencement of development, details of 2.4m x 43m visibility splays at the access points to the development shall be submitted to and approved in writing by the local planning authority. The scheme shall be implemented before the buildings are occupied. Development shall be carried out in accordance with the approved details and the visibility splays shall thereafter be kept free of all obstructions over a height of 600mm above the level of the centre of the access points.

11) The development hereby approved shall not be brought into use until the vehicular accesses, turning and parking areas have been laid out in accordance with drawing no. 3815bl Rev02. The laying out of these areas shall be in further accordance with a specification including details of their consolidation, surfacing and drainage that shall have first been submitted to and approved in writing by the local planning authority. Development shall be carried out as approved and maintained for the purposes of access, parking and turning of vehicles thereafter.

12) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
   i) the parking of vehicles of site operatives and visitors;
   ii) loading and unloading of plant and materials;

iii) storage of plant and materials used in constructing the development;

iv) facilities for site operatives;

v) wheel washing facilities;

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

13) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved.

In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.

14) No development shall commence until details of soft landscape works including an implementation programme have been submitted to and approved in writing by the local planning authority.

The landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied in accordance with the agreed implementation programme.

15) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

16) The development hereby permitted shall be carried out in accordance with the bat mitigation measures identified in the Ecological Appraisal by Envirotech dated March 2015 and such measures shall be implemented before the dwellings are first occupied.

17) No development shall take place until details of the means by which the dwellings hereby permitted may be connected to the utilities to be provided on site to facilitate super-fast broadband have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.

18) No dwelling shall be occupied until space has been laid out within the site for bicycles to be parked in accordance with details that have first been submitted to and approved by the local planning authority. Development shall be carried out as approved and that space shall thereafter be kept available for the parking of bicycles.