

Appeal Decision

Hearing held on 10 November 2016

Site visit made on 10 November 2016

by Roger Catchpole DipHort BSc(hons) PhD MCIEEM

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

Decision date: 05 December 2016

Appeal Ref: APP/J1860/W/15/3138717

Land Adjacent Millennium Green, Holt Heath, Worcestershire (Grid Ref: 380625 Easting 263123 Northing)

- 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 Briggs against the decision of Malvern Hills District Council.
 - The application Ref: 14/01596/OUT, dated 14 November 2014, was refused by notice dated 18 August 2015.
 - The development proposed is described as the "development of up to 40 dwellings with all matters reserved with the exception of access".
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was submitted in outline, with only access to be determined at this stage. However, this element of the scheme has since been withdrawn and all matters are now reserved. This is the basis upon which this appeal has been determined.
3. Despite all matters being reserved, a plan showing the potential layout of the scheme has been produced as a result of a consultative process that occurred prior to determination. The plan is marked 'illustrative'. I accept that it indicates how the scheme might be advanced at the reserved matters stage as well as its spatial relationship in relation to the existing settlement and the wider countryside. As such I have given it due consideration.

Application for Costs

4. At the Hearing an application for costs was made by Malvern Hills District Council against Mr Briggs. This application will be the subject of a separate decision.

Main Issues

5. The main issues in this case are:
 - whether the Council can demonstrate that there is deliverable 5 year housing land supply;
 - the effect of the proposal on the character and appearance of the open countryside; and
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- if a five-year supply of deliverable housing land cannot be demonstrated, whether other material considerations would significantly and demonstrably outweigh the benefits of the scheme.

Reasons

Development Plan

6. The development plan comprises the South Worcestershire Development Plan 2016 (DP) which was adopted in February 2016. This occurred during the course of the appeal and I am satisfied that all parties have had adequate opportunity to respond to this change of policy. Bearing in mind the main issues and the discussions during the Hearing, I find the most relevant policies to be SWDP 2, SWDP 21, SWDP 25 and SWDP 59 of the DP.
7. Policy SWDP 2 sets out the development strategy and settlement hierarchy for the development plan area. It defines Holt Heath as a Category 3 settlement. Infill within the defined development boundaries of rural settlements such as Holt Heath is acceptable, subject to other development plan policies, but otherwise strictly controlled by a number of exception-based policies. Both parties agree that the appeal site is not within the development boundary and consequently located in the open countryside. It was also agreed at the Hearing that the proposal would not conform to any of the specified exceptions that would justify development under such circumstances.
8. Policy SWDP 21 seeks, amongst other things, to ensure that all development integrates effectively with its surroundings and complements the character of an area by responding to distinctive features or qualities. It also requires any development to be of a scale that is appropriate to the setting of a site and its surrounding landscape character. Policy SWDP 25 further emphasises that all development proposals must integrate with the character of their landscape setting and, amongst other things, take into account the latest landscape character assessment¹.
9. Policy SWDP 59 sets out the spatial distribution of allocated development across each of the three different categories of rural settlement. This reflects the extent of local service provision, size of the settlement and the availability of suitable, deliverable or developable land. The majority of dwellings are allocated to Category 1 and 2 settlements with only 14 dwellings allocated to one Category 3 settlement in the Malvern Hills area. Undisputed evidence submitted during the Hearing established that Holt Heath comprises approximately 163 dwellings and that it is ranked 73rd in relation to the services it provides.

Housing Land Supply

10. The appellant is of the opinion that the Council is unable to demonstrate a deliverable 5-year housing land supply (5-yr HLS) and maintains that even if this were not the case a presumption in favour of sustainable development still applies. However, case law² has established that the presumption does not apply unless a proposal accords with the development plan or the development plan is absent, silent or relevant policies are out-of-date and any adverse

¹ Landscape Character Assessment Supplementary Guidance 2012. Worcestershire County Council.

² Suffolk Coastal District Council v Hopkins Homes Ltd and Richborough Estates Partnership LLP v Cheshire East and SoSCLG [2016] EWHC Civ 168

impacts do not significantly or demonstrably outweigh the benefits. Consequently, the presumption can only apply in this case if the Council is unable to demonstrate a deliverable 5-yr HLS. This is because the scheme would clearly be contrary to policies SWDP 2 and SWDP 59 given its location and the fact that no exceptions apply.

11. Despite the appellant's position, no substantiated evidence was submitted either in writing or at the Hearing that would lead me to conclude that a deliverable 5-yr HLS could not be demonstrated. A number of sites were identified that the appellant felt would not be deliverable. However, even if no dwellings were delivered on these sites, the appellant's own calculations indicate that an, albeit reduced, 5-yr HLS would still be present even if a 20% buffer is applied. The appellant maintained that the identified sites were indicative of the wider plan area and that the 5-yr HLS was therefore in a 'fairly precarious position'.
12. However, I am not satisfied that such a generalisation is evidentially robust given the restricted number of sites that were considered. To accept such a supposition would risk arriving at a conclusion based on a wholly unfounded extrapolation of the facts. The appellant acknowledged that a comprehensive review of sites had not been undertaken and it was established at the Hearing that the substantiated facts were limited to the identified sites. Even when these sites were considered it was clear that some progress had been made in the delivery of housing at two out of five, Pickersley Grove and Elmhurst Farm. This occurred after August 2016 when the appellant submitted a revised statement of case.
13. I accept the completion rates have been below the national average and that low build-out rates have been present across the plan area. However, I am not satisfied that there are sufficiently compelling reasons to suggest that this situation would continue in the future. This is because of the greater certainty provided by the recently adopted plan and the involvement of at least three major house builders in the development of some large urban extensions. Moreover, the identified sites illustrate the dynamic nature of deliverability which can fluctuate over very short periods of time.
14. Given the above, I conclude that the Council is able to demonstrate a deliverable 5-yr HLS and that paragraphs 14 and 49 of the National Planning Policy Framework 2012 (the Framework) do not apply. The proposal would be contrary to policies SWDP 2 and SWDP 59 of the DP and as such would not accord with the development plan.

Character and Appearance

15. The appeal site is a rectangular, agricultural field located on the western edge of the small village of Holt Heath. The village boundary follows the southern edge of the site which abuts the rear gardens of residential dwellings. Its eastern edge is adjacent to Holt Heath Millennium Green (MG) whilst its western edge is adjacent to the B4196 beyond which lies open countryside. Its northernmost extent is adjacent to the access track that serves the MG which also has open countryside beyond. Established hedgerows of moderate size enclose the site with the exception of the southern boundary which comprises a range of garden boundary features.

16. I observed that the appeal site is typical of the mixed agricultural landscape of the surrounding area which is characterised by established hedgerows and fields of moderate to large size. Its geographical location and appearance is such that it helps to delineate the crisply-defined north-western boundary of the village and contributes to the open, rural character when the site is approached from the west and the north along the B4196 and the A443.
17. Bearing this in mind, I find that the proposal would lead to a highly incongruent suburban sprawl that would be clearly visible from multiple vantage points when the village is approached along these roads. This impact would be especially acute when viewed from the B4196 given the height of the deciduous hedgerows and predominance of two storey dwellings. This visual impact would be greater during the winter months when leaves are absent and the hedgerows have been cut. I find the reliance on the screening provided by boundary vegetation to be overly optimistic in the Landscape and Visual Appraisal as the rooflines and lighting of the proposal would be clearly visible from these receptors as well as the MG, as the photomontage shows.
18. I acknowledge the potential mitigating effect of the internal green space and landscaping, as shown on the illustrative plan, as well as the results of the massing model analysis. However, the fact remains that the proposal would lead to a significant encroachment of the built form into the open countryside. Indeed, the appellant accepts that there would be 'visual change and some degree of harm' caused by the introduction of the proposed buildings. This would lead to a significant increase in the developed footprint of the village, thus disrupting the nucleated character of the settlement. The reliance on existing hedgerows and internal landscaping to provide screening is not sufficiently robust given the impermanent nature of such features and the fact that they can be removed or die from natural causes at any time.
19. Given the above, I conclude that the proposal would cause significant harm to the character and appearance of the open countryside contrary to policies SWDP21 and SWDP25 of the DP. This would not be in accordance with the development plan.

Other Matters

20. The appellant has relied upon the a range of planning appeal decisions to justify a departure from plan-led decision-making which is one of the core land-use planning principles of the Framework. Planning law³ requires that applications for planning permission must be determined in accordance with the development plan, unless material considerations indicate otherwise. The materiality of any planning appeal decision to a given case rests upon the degree of similarity that is present. It has also been established that it is not a principle of law that like cases must always be decided alike⁴.
21. Whilst I have paid careful attention to the decisions that have been brought to my attention, I do not find the relevant circumstances similar in all respects. This is due to changes in case law affecting the presumption in favour of sustainable development⁵, the presence of an emerging plan⁶, an absence of

³ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990 (as amended)

⁴ Bloor Homes East Midlands Ltd. v SoSCLG & Hinckley & Bosworth Borough Council [2014] EWHC 754 (Admin)

⁵ APP/F1610/A/14/2228762, APP/C1625/A/13/2199963 & APP/D0840/A/13/2209757

⁶ APP/C1625/A/13/2199963

material harm⁷, a lack of a defined development boundary⁸ and a failure to robustly demonstrate a deliverable 5-yr HLS⁹. As a result, these decisions only carry limited weight in the planning balance of this appeal which has been considered on its individual merits and the evidence before me.

22. I acknowledge that the proposal would have a number of benefits. It would be in a nominally sustainable location, make an, albeit small, contribution to the supply of housing, increase affordable housing provision, improve surface water drainage and provide a pedestrian walkway along the B4196, thus providing an additional pedestrian access to the MG. However, I am not satisfied that these benefits would outweigh the harm that I have identified or justify the clear conflict that would arise with the newly-adopted plan.
23. The appellant also contends that other benefits are present. Firstly, that the development would lead to job creation and biodiversity enhancement. These benefits are, however, unsubstantiated because landscaping is a reserved matter that is yet to be determined and there is no indication that the construction phase of the development would lead to any employment for local people.
24. Secondly, that economic and public open space benefits would be derived. Whilst a financial contribution towards the maintenance of the MG would be of some benefit it was established at the Hearing that this was not necessary. I also find that any provision within the development itself would simply be a by-product and thus neutral.
25. In terms of economic benefit I also find this unsubstantiated. This is because future occupants would have a high degree of reliance on private motor vehicles, especially given that the bus service does not serve local schools. As a result, economic benefits are likely to be spread over a wide area and would be highly diffuse. This would also reduce the perceived support to local services that may not be used to any significant extent.

Conclusion

26. For the above reasons and having regard to all other matters raised I conclude that the appeal should be dismissed.

Roger Catchpole

INSPECTOR

⁷ APP/D0840/A/13/2209757

⁸ APP/F1610/A/14/2228762

⁹ APP/Y3940/A/14/2222641, APP/R3325/A/13/2209680 & APP/ R3325/A/13/2203867

APPEARANCES

FOR THE COUNCIL

Ms H Jones	Planning Officer
Mr C Potterton	Chartered Landscape Architect BA DipLA CMLI
Ms R Murray	Senior Planning Officer

FOR THE APPELLANT

Mr G Brockbank	Planning Consultant
Mr M Davies	Chartered Landscape Architect BA(hons) DipLA CMLI
Mr A Hart	Private Individual
Mr D Brady	Private Individual

INTERESTED PERSONS

Mr J Bowker	Vice Chair Parish Council
Ms P Cumming	Local Councillor

DOCUMENTS SUBMITTED

- S1 Costs application on behalf of Council
- S2 Costs rebuttal on behalf of Appellant
- S3 Planning appeal decision (Ref: APP/J1860/W/15/3016539)
- S4 Village service ranking table
- S5 Village housing allocation table