
Appeal Decision

Site visit made on 16 January 2017

by Richard Aston BSc (Hons) DipTP MRTPI

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

Decision date: 17th February 2017

Appeal Ref: APP/J1860/W/16/3157997

Former Larford Works, Larford Lane, Astley, Worcestershire DY13 0SQ

- 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 Joe Folkes (c/o Allens Caravans Estates Ltd) against Malvern Hills District Council.
 - The application Ref 16/00049/FUL, is dated 23 December 2015.
 - The development proposed is change of use of land for the siting of residential caravans.
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Decision

1. The appeal is dismissed and planning permission refused for change of use of land for the siting of residential caravans at former Larford Works, Larford Lane, Astley, Worcestershire DY13 0SQ.

Application for costs

2. An application for costs was made by Mr Joe Folkes (c/o Allens Caravans Ltd) against Malvern Hills District Council. This application is the subject of a separate Decision.

Procedural Matter

3. The appeal results from the Council's failure to determine the planning application within the statutory period. When read as a whole, the Council's statement sets out that had they been in a position to determine the application they would have refused it on the grounds of the site's location within open countryside, the lack of need given the Council can demonstrate a five year supply of housing land and that the scale, form and function of the proposal would erode the rural character of the area. Furthermore, the proposal fails to provide a legal agreement to secure on site affordable housing and financial open space contributions, that it has not been demonstrated that the loss of employment land would be acceptable and that it would harm highway safety. I have therefore determined the appeal on this basis.

Preliminary Matters

4. The application was submitted in December 2015 but on 25 February 2016 the South Worcestershire Development Plan 2016 ('SWDP') was adopted. I am required to determine this appeal on the basis of the development plan and national policy which are in place at the time of my decision and accordingly I have determined the appeal on that basis.
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5. At the date of the application being made the Council could not demonstrate a 5 year housing land supply. However, following the adoption of the SWDP the Council states that it now has in excess of a 5 year supply of housing land for this area. The appellants contest this because the Council has historically failed to maintain a 5 year supply and that a 20% buffer should therefore be applied to the calculation. However, the SWDP is a recent plan which has been found sound on examination and consequently I have dealt with the appeal on the basis that a 5 year housing land supply exists.

Main Issues

6. Given the above, the main issues are:
- Whether the proposal is a suitable site for housing, having regard to its location and the effect on the character and appearance of the area, including the wider rural landscape.
 - Whether the proposal makes adequate provision for affordable housing and infrastructure contributions.
 - Whether the loss of employment land would be acceptable.
 - The effect on highway safety.

Reasons

The appeal site

7. The site covers a total area of approximately 6.85 ha and although it has been vacant for 10 years, the Council state that a lawful development certificate confirms the site's ability to continue in Class B2 use¹. It contains a number of steel framed and other ancillary buildings in varying states of dereliction located in the southern and eastern parts of the site. The majority of the site is covered in asphalt and concrete hardstandings. The northern part of the site has a less developed character, containing predominantly scrubland and is free from buildings or other structures.
8. Existing Public Rights of Way ('PRoW') run along the eastern and western boundaries of the site and others exist in proximity to it. Access is taken off Larford lane, a quiet rural lane which connects to Longmore Hill and the B4196. The site is bordered by an earth bund along the western boundary and partially screened in a number of areas by trees and vegetation.

Suitable site

9. The appeal site is located within the open countryside, outside of any defined development boundary within the South Worcestershire Development Plan 2016 ('SWDP') under Policy SWDP 2. Part (C) of Policy SWDP2 resists most forms of windfall development, including market housing, outside development boundaries but does allow for development within the open countryside for a number of specified purposes. This is based on a number of principles which, amongst other things, includes providing sufficient housing to meet objectively assessed needs to 2030 and encouraging the effective re-use of accessible, available and environmentally acceptable brownfield land as set out in part (G).

¹ 87/02665/EUC

10. The proposal does not fall within any of these exceptions and it would therefore conflict with Policy SWDP2 insofar as the adopted settlement strategy is concerned, a strategy which has only recently been found sound on examination.
11. The site is Previously Developed Land ('PDL') and although part (iv) of Policy SWDP2 supports the use of brownfield land, the SWDP also makes it clear that the fact that a site is PDL is merely a 'plus consideration of the planning balance'², a matter to which I return to later. My attention has also been drawn to Policy SWDP13 which, amongst other things, relates to the effective use of such land. To my mind, the relevance of this to the appeal before me lies within part (F) which requires windfall developments to be assessed against density criteria relevant to their locality and the character of the natural and built environment. To my mind, this is a key consideration and is a matter to which I now turn to.
12. The application is supported by a Landscape and Visual Appraisal ('LVA') which sets out that at a regional level the site is within the Regional Character Area of the Kinver Sandlands, an area of former woodlands within a gently undulating topography that is dissected by narrow valleys. At a county level it is within the Sandstone Estatelands as identified by the Worcestershire Landscape Character Assessment. This sets out key characteristics such as arable land uses, hedgerow boundaries to fields and large scale landscape with wide views over open farmland. At a more local level the site is within the Areley Kings Sandstone Estatelands Landscape Description Unit ('LDU') and to the east, the River Severn – Bewdley to Winnall Riverside Meadows LDU. Both are identified within the LVA as having a 'Medium' sensitivity to change.
13. The landscape immediately adjacent to the appeal site varies in land use from pasture farmland, to woodland to recreation and the proximity of the river and Larford Lakes gives the area a mix of both formal and organic landscape with the river's edge being influenced by industrial and leisure development further towards Stourport-on-Severn. The high level of public accessibility results in the local landscape having a high value but the appellant contends that the derelict nature of the site, the lack of landscape designation and degrading landscape characteristics of its boundary features results in the appeal site having a low sensitivity to change.
14. Whilst it was evident that similar uses exist on sites set out along the edge of the River Severn, these are located within the more built-up environment of Stourport-on-Severn as opposed to the appeal site, which is physically and visually unrelated to any settlement and has a stronger affinity with the surrounding open countryside, than such uses. At the county and local level, I share the conclusion of the LVA that there would be some uncharacteristic encroachment of residential caravans into the Areley Kings Sandstone Plateau and Land Cover Parcel, resulting in a 'Small' change and a 'Minor' adverse effect upon the 'Medium' sensitivity LDU³. Overall, there would be some localised loss of landscape character and 'Negligible' effects on the wider regional and national landscape character areas.
15. Turning to visual effects, the existing industrial buildings are visible in wider views but as set out in the LVA they are not overly dominant given they sit

² Paragraph 7, page 50 of the SWDP

³ Paragraph 4.24 LVA

- below the skyline and have vegetation and trees both in the foreground and as a backdrop. I share this view and at the time of my site visit, although the existing buildings were visible from Windsor Drive and Areley Common they did not necessarily stand out given their natural green finish and their clustering of within only part of the site, appearing somewhat agricultural.
16. The introduction of what would be likely to be a very formally laid out residential estate of some 111 park homes, with row upon row of tightly spaced caravans across the whole of the site and at such a high density, would be clearly visible on the approach to the site from surrounding PRow, particularly those that are elevated relative to the appeal site to the north and west⁴ and which have a 'High' sensitivity to change due to their recreational nature.
 17. I am mindful that the operator would need to apply for a Site Licence under the Caravan Sites and Control of Development Act 1990 and this would then attach conditions which would guide the layout and spacing of caravans within the site. Nevertheless, even with such conditions and restrictions on the colour of the caravans and additional landscaping, the proposal would represent a significant encroachment of development beyond the confines of the existing hard surfacing and buildings, given its extension into the northern part of the site that is currently free from any significant development.
 18. Whilst there would be some screening provided from the trees and vegetation surrounding the site, the roofscape of the caravans would be conspicuous and prominent from the immediate surroundings, in particular during the winter months and there would be a noticeable change in the character of views, in particular from viewpoints 3, 4 and 5 and the wider publically accessible land on Areley Common. In my view, the 'Negligible' change to views from viewpoints 4 and 5 and the subsequent finding of a 'Minor' beneficial effect upon the 'High' sensitivity receptors using such local routes, somewhat underestimates the impacts.
 19. Overall, the proposal would be a somewhat unsympathetic intrusion into this particular area of the rural landscape and would result in a localised loss of character and some visual harm. Whilst the effect of the proposal would be somewhat localised, nonetheless it would cause harm to the character and appearance of the area, within the immediate vicinity of the appeal site and as a consequence its enjoyment by users of the affected PRowS. Whilst the harm may not be significant I am not persuaded that it would be any less harmful than the existing situation.
 20. Taking everything together, the proposal would not be a suitable site for housing in terms of its location and the effect on the character and appearance of the area. It would conflict with Policies SWDP2, SWDP21 and SWDP25 of the SWDP which, amongst other things, require all new development to integrate effectively with its surroundings, reinforce local distinctiveness, complement the character of the area and are appropriate to, and integrate with, the character of the landscape setting.

Affordable housing and infrastructure contributions

21. The park homes are dwellings providing homes for people to live on a permanent basis and although the units are unlikely to be constructed from

⁴ Viewpoints 3, 4 and 5 as set out in LVA

bricks and mortar, they are a form of market housing. Policy SWDP15 requires 30% affordable housing on sites of 15 or more dwellings on brownfield sites in Malvern Hills. On the basis of the information before me, I have no reason to consider that such a requirement would fail to meet the tests of necessity, relevance and fairness as set out in section 122 of the Community Infrastructure Levy Regulations (as amended) 2010 ('the Regulations') or paragraph 204 of the National Planning Policy Framework ('the Framework').

22. Park homes may offer a lower cost type of accommodation which is more affordable and caters for a specific demographic. However, the definition of affordable housing in the Framework states that low cost market housing may not be considered as affordable housing for planning purposes. Whilst the appellant has confirmed they cannot provide for on-site affordable homes, they appear to have been willing to discuss an appropriate off-site contribution. Whatever the case may be in relation to discussions held with the Council, there is no mechanism to secure such a contribution and no such justification for off-site contributions is before me, as required by part (C) of Policy SWDP15.
23. Whilst I have some sympathy with the appellant's position, the Planning Inspectorate's Procedural Guide Planning Appeals – England 2016 is clear that a certified copy of the executed obligation should be received no later than seven weeks from the appeal start date. Although the appellant has indicated one would be submitted during the process, no such agreement is before me. In the absence of the necessary obligation the proposal fails to make adequate provision for affordable housing and would conflict with Policy SWDP15 of the SWDP which, seeks to ensure that new development contributes to the provision of affordable housing.
24. There is some dispute regarding whether contributions are required for open space and outdoor play areas. However, neither party has provided me with the relevant SWDP policies nor have I been given substantive, up-to-date local evidence by the Council to indicate that such contributions are required. As such, I cannot be satisfied that the contributions requested meet the tests set out in the Regulations. In these circumstances, the absence of a mechanism for securing these contributions does not therefore weigh against the proposal.

Loss of employment land

25. The Council's statement refers to the lack of sufficient evidence to demonstrate that the proposal would accord with the Policy SWDP8 and the Framework in terms of the loss of employment land. The Council contend that the site was 'extensively marketed' in July 2006 by a previous owner and that since December 2007, when the appellant purchased the site, there is little evidence of further marketing.
26. I have been provided with the marketing particulars by the appellant⁵ but other than general details regarding the method of marketing, there is little before me to demonstrate that this amounted to an extensive or sustained marketing campaign. For example there are no details of the length or duration of the marketing undertaken and furthermore, there is nothing before me to suggest that any marketing has taken place in the period between 2007, when the site was purchased by the appellant and when the application was submitted in December 2015.

⁵ Appendix 1 of RPS Planning Application Supporting Statement.

27. However, the extent to which the marketing exercise can be questioned is only one part of the consideration required. It is also necessary to consider whether the site has reasonable prospects to be re-used or redeveloped for employment purposes, in accordance with paragraph 22 of the Framework. This makes it clear that 'planning policies should avoid the long term protection of sites allocated for employment use where there is no reasonable prospect of a site being used for that purpose. Where there is no reasonable prospect of a site being used for the allocated employment use, applications for alternative uses should be considered on their merits having regard to market signals'.
28. The appellant contends that the site is well known for criminal activity, fly tipping and that the site was unattractive to local business operators due to the type and size of the units. I also note that two applications for live/work units were submitted but withdrawn before determination. Nonetheless, such matters do little to persuade me that the site could not be developed for an employment use at some point in the future because, in my experience, criminal activity and fly tipping are somewhat typical issues faced by the owners of many such industrial sites in both urban and rural areas. Ultimately, such matters do not automatically result in a site being unviable or demonstrate that a site has no reasonable prospect of being used for industrial purposes. Furthermore, there is nothing substantive before me in relation to issues with the size of the units or details why they may be unsuitable for prospective users or can't be used for other reasons.
29. For these reasons, the proposal fails to demonstrate that details of comprehensive marketing has taken place for at least 12 months and there is nothing before me to evidence that redevelopment for any employment generating use is unviable, is unlikely to achieve viability within 5 years and that there is no reasonable prospect of the site being used for such a purpose. I am therefore not satisfied that the proposal demonstrates that the loss of employment land would be acceptable and consequently, it would conflict with Policy SWDP8 of the SWDP and the Framework.

Highway safety

30. The submitted Transport Assessment ('TA') indicates that the number of trips generated, when compared with the lawful B2 use would be similar. The fall back position of such a use is a material consideration with more than a theoretical prospect of resuming and I therefore attach substantial weight to it. Furthermore, there would be less HGV movements and I note that the relevant Highway Authority does not object to the proposal on the grounds of traffic impacts. In the absence of any substantive evidence from the Council, I have no reason to disagree with the findings of the TA or conclude otherwise.
31. For these reasons, I find that it has not been demonstrated that the proposal would cause harm to highway safety and accordingly, it would not conflict with Policy SWDP4 of the SWDP which, requires proposals to address road safety. It would also not conflict with the Framework which, at paragraph 32 states that development should only be refused on transport grounds where the residual cumulative impacts are severe.

Other Matters

32. The appellant has referred me to a number of appeal decisions where housing developments were permitted outside defined settlement boundaries where a

five year supply was demonstrated. In the cases cited by the appellant, the Inspectors found that other material considerations outweighed the policies in the development plan. I do not find that those considerations exist in this appeal and therefore they do not alter my views in relation to the main issues. In any event, each case must be determined on its own merits.

33. I note that the Council have not objected on the grounds of the location of the site in relation to services and facilities and that as such, they appear to be satisfied that the site is in a sustainable location. However, having visited the site I am not persuaded that this is the case, given that access to the nearest services and facilities in Areley Kings and Astley Cross would be across open fields or via Longmore Hill, a narrow and unlit rural road with no footway. Had I been minded to allow the appeal this is something which I would have sought further comments on from the parties, but as I am dismissing the appeal I have not found it necessary to consider it any further.

Planning balance and overall conclusions

34. The starting point is that the proposal would conflict with the development plan in terms of its location. It would also conflict with the development plan insofar as it would fail to secure affordable housing or alternatively, off-site contributions. I have also found that although large scale, derelict industrial buildings would be removed, the proposal would replace this with a scheme that would cause harm to the character and appearance of the rural landscape and area. Furthermore, Policy SWDP2 is clear that development is limited to, amongst other things, that which is specifically permitted by other SWDP Policies and the footnote for part (C) cites Policy SWDP 8 as one such example, a policy which I have also found conflict with insofar as the proposal does not demonstrate that the loss of employment land would be acceptable.
35. There would be some compliance with aspects of Policy SWDP2 and Policy SWDP4 of the SWDP insofar as there is encouragement for the re-use of PDL and this is a positive factor to be weighed in the balance. I have also found that there would be no harm to highway safety but to my mind, this is a neutral factor. The proposal would deliver a number of residential park homes intended for older people and there would also be social and economic benefits by providing such homes and the additional households would be likely to support local businesses and services. The scheme would also generate economic activity during construction. I attach substantial weight to these benefits.
36. Paragraph 14 of the Framework advocates a presumption in favour of sustainable development, requiring that proposals should be approved without delay where they accord with the development plan. However, the proposal would conflict with an up-to-date development plan, when read as a whole. As such, the proposal would not be the sustainable development for which the Framework indicates a presumption in favour.
37. Mindful that the development plan has only recently been adopted and that I have found the Council can demonstrate a 5 year supply of housing land, in the unweighted balancing exercise required, the harm that I have identified in terms of the site's location, effect on the character and appearance of the area, failure to secure affordable housing provision and failure to demonstrate that the loss of employment land would be acceptable, clearly outweighs the above benefits.

38. For the reasons set out above, the proposal would conflict with the development plan, when read as a whole. Material considerations do not indicate that the proposal should be determined other than in accordance with the development plan and having considered all other matters raised, I therefore conclude that the appeal should be dismissed.

Richard Aston

INSPECTOR