
Appeal Decision

Site visit made on 12 December 2016

by David L Morgan BA MA (T&CP) MA (Bld Con IoAAS) MRTPI IHBC

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

Decision date: 27th February 2017

Appeal Ref: APP/J1860/W/16/3157040

Mill Orchards, Stourport Road, Great Witley, Worcestershire WR6 6JP

- 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 P Van Tongeren against the decision of Malvern Hills District Council.
 - The application Ref 15/00863/OUT, dated 16 June 2015, was refused by notice dated 20 July 2016.
 - The development proposed is outline application for the erection of 5 no. dwellings with access from Stourport Road. All other matters reserved.
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Decision

1. The appeal is dismissed.

Main Issues

2. These are a) whether the proposal site would be a suitable location for market housing having regard to the policies of the development plan and national planning policy and b) its effect on the landscape character of the area.

Procedural matters

3. The proposal is for outline planning permission with all matters reserved apart from access. The appeal has been determined on the same basis.
4. 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 they advise that reason for refusal number 3 on the decision notice is no longer to be defended.

Reasons

5. The appeal site comprises a linear plot of land on the western margins of the settlement of Great Witley. The site comprises an access drive, areas of hard standing two single storey timber sheds and an area of managed open land beyond these to the west. The site faces onto the A451 but is separated from the road by a footpath, verge, a rising bank and a mature though closely cut hedge. Here the site and open land beyond rise to the north and is generally planted with commercial fruit trees and stands of woodland. Immediately to the east of the site there are pairs of semi-detached dwellings set a little back

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

from the road though, in contrast to the appeal site, these are at a grade consistent with the highway. To the south the highway is bordered by a verge, hedging and open fields beyond. Further to the west there are a series of dwellings set within their own generous grounds, all again with mature planting bordering the verge of the road.

6. This ensemble, particularly when experienced either driving or walking to the west, is one of a sense of arrival into the determinedly rural context of open countryside, perceived in contrast to the more cohesive built form of the village behind.
7. The proposals are for five dwellings, submitted in outline with all matters save access reserved. Two indicative layouts are however provided, the first illustrating all dwellings opposite and to the east of the access with a drive to the south, the second illustrating four dwellings to the east of the access and one to the west with the access road located to the north. Whilst indicative, these layouts are sufficient for me to conclude with a fair measure of assurance that the dwellings would have to be generally linear in distribution and be located generally mid-way within the depth of the plot to account for both access options and private amenity space.

Suitable location for market housing

8. As the appellant accepts, the site lies immediately outside the settlement boundary of Great Witley. It is therefore, as defined by policy SWDP2 of the South Worcestershire Development Plan (SWDP) located within open countryside. This is a key policy of the development plan setting out the Development Strategy and site allocations of the plan. Amongst the key principles (A) it sets out are to 'provide for an facilitate the delivery of sufficient housing to meet objectively assessed need...' and to 'Safeguard and (wherever possible) enhance the open countryside'.
9. SWDP2 (c) moreover makes clear that in the open countryside, development will be strictly controlled and will be limited to dwellings for rural workers, employment development in rural areas, rural exception sites, buildings for agriculture and forestry, replacement dwellings, house extensions, replacement buildings and renewable energy projects. Being outwith the settlement boundary and outside the range of development considered permissible in SWDP2 (c), the proposals are therefore in conflict with that policy.
10. It is the case that Great Witley is identified as a Category 1 village by the Council in its Village Facilities Survey and the Rural Public Transport Survey, and is, as a consequence, recognised as 'one of the more sustainable villages in the District'. This recognises that it supports a range of facilities and services. It follows that on these terms it may appropriately support limited further residential development within its defined boundaries.
11. It is a significant component of the appellant's case that the site, being immediately adjacent to the settlement boundary, can be argued to benefit from such proximity on the basis of its 'locational sustainability' and that this may reasonably outweigh the conflict with the letter of policy SWDP2. It is indeed the case that the appeal site would be proximate to such facilities, many of which could reasonably be held to be accessible by foot or other non-car transport modes. The appellant's argument also therefore follows that there is no conflict with paragraph 55 of National Planning Policy Framework

(henceforth referred to as the Framework), which seeks to prevent isolated home in the countryside. Moreover it is suggested, the proposals, providing five residential units, would contribute to the supply of housing in the area, in accordance with the expectations of paragraph 47 of the Framework.

12. The appellant cites three appeal decisions² in support of their case where Inspectors have found, notwithstanding a conflict with the letter of policy SWDP2, residential development beyond a given settlement boundary to be acceptable. Whilst these decisions are before me, the details of the respective cases and the precise circumstances that prevailed at the time in each case are not. This necessarily limits the weight I am able to afford them in this case. Nevertheless, the arguments in respect of development in relation to proximity of settlements in each case are well made and, though I have limited the scope of weight that may be apportioned them, these are indeed material considerations the appellant is right to anticipate should bear on this case.
13. However, from a consideration of all three decisions, one salient factor is common to all. Whilst the fact of conflict with policy SWDP2 is accepted in all cases, in none is material harm to the open countryside identified. Whilst a technical breach of the policy was acknowledged and accounted for, in each case a failure to safeguard the open countryside as anticipated by SWDP2 was seen to have been avoided.
14. The proposal may indeed be 'locationally sustainable' in terms of its proximity to services but that does not of itself make the site a suitable location for market housing. The proposals are in technical breach of policy SWDP2 of the SWDP. It is however the extent to which they conflict with the actual purposes of that policy which determines finally the weight to be apportioned to that conflict. One of the key purposes of SWDP2 is to safeguard and (wherever possible) enhance the open countryside. It is to these detailed and specific matters that I now turn.

Effect on the landscape character of the area

15. In order to gain ingress to the site a new access would be required off the A451. To satisfy highway safety requirements this would necessitate the provision of visibility splays of approximately 160m in each direction. In order to secure access within the site a proposed road (also apparently required to access the existing Mill Orchard holding (illustrated on both indicative layouts) would need to negotiate the significant change in levels between the highway and that of the site. Moreover, for both of these to be achieved a significant section of existing hedgerow would need to be removed and a structural retaining wall comprised of interlocking sections with a gently battered face constructed along the length of this section of the A541 and the flanks of the rising access road. Where sections of the hedge would require removal this would be replaced by that of native species.
16. In my view the combination of the formal angled cant of the extensive visibility splays, the hard, uniform nature of the structural wall (notwithstanding the presence of earth and the limited opportunities for vegetative growth this would provide) and the splayed battered opening of the rising access drive would all combine to form a new and distinctly urban (or more accurately suburban) appearance to this section of the road immediately outside the built

² APP/J1860/W/16/3155541, APP/J1860/W/15/3135877 and APP/J1860/W/16/3152030

limits of the village. Not only would the softer organic relationship of verge, bank and hedge be lost over a significant frontage, but the replacement would stand in awkward and dissonant contrast to the surviving verge and hedge to the south. That key sense or immediate rurality at the edge of the village would be lost, to the very significant detriment of the character and appearance of this important element of open countryside. Whilst the replacement section of hedge may mitigate this effect to a limited degree, it would do very little to alter the greater deleterious outcome.

17. Moreover, whilst the surviving and replacement hedge may serve to a degree to filter views of the proposed dwellings from the road (particularly the footpath) this would not render them invisible from public views. During the winter months (as the presence of the new agricultural sheds through the native hedge attested at the time of my visit) the dwellings would still be very evidently perceived from the road, whether by those walking or those travelling by car to the west, especially in longer perspective views. The site would allow for little other than a linear arrangement of dwellings, as suggested by the indicative layouts. This would perpetuate the incipient pattern of the ribbon of development established by the dwellings to the east of the site. This would in turn amount to an extended finger of development demonstrably and perceptively extending into the open countryside, in stark contrast to its present generally open and rural character.
18. It is the case the case that part of the site to the east is currently occupied by two single storey timber clad structures with associated hard standing. Indeed, the appellant makes a point of this to support the view that the site is, at least in part, previously developed land. It is not entirely clear to me how such an assertion squares with the terms of the grant of planning permission for the agricultural building³ to the west of the appeal site and which I saw now close to completion during my site visit. As I understand it, permission was granted for this new building subject to conditions, one of which (no 9) requiring:

'No development shall commence until a scheme and timetable for implementation of the removal of the buildings to the east of the site as indicated on plan numbers PVT01, PVT03, PVT04 and PVT05, including the removal of any materials arising from the demolition and the making good of the land with an appropriate landscaping, has been submitted and approved in writing by the local planning authority. The demolition of the buildings and making good of the land shall be carried out in complete accordance with the approved details and timescale. The development hereby approved shall not be brought into use until such time as the existing buildings have been removed.'

19. The reason for this condition was indicated as:

The removal of these buildings forms part of the justification for the introduction of a new building in association with the operations on the site and may not otherwise have been acceptable and also in the interests of the visual amenities and landscape character of the area and in accordance with policies SWDP12, SWDP21 and SWDP25 of the South Worcestershire Development Plan.

³ Planning ref: 16/00593/FUL.

20. It seems to me therefore that part of the rationale, and indeed justification behind the grant of this permission of the new agricultural building was to secure the removal of the existing buildings on the eastern part of the site and the making good of the ground through appropriate mitigation specifically and consciously in the interests of the landscape character of the area. Under the terms of that conditional planning permission at least, the designation of that part of the site may more appropriately be considered *previously remediated land*. As such, in spirit at least, it is closer to the description of some of the exclusions identified in the definition of previously developed land set out in the Glossary to the Framework. Such a conclusion would exclude any weight being apportioned to the proposal as the utilisation of part of the site as previously developed land.
21. However, even if this interpretation were not accepted, and it were more appropriate to consider the status of the land as it is now, and this part of the site considered previously developed land, it remains a fact that these structures and associated hard standing occupy less than half the area of the appeal site. Here the expectations (and weight to be afforded them) set out in favour of the reuse of such previously developed land anticipated in national and local policy cannot therefore reasonably be applied to the greater site as a whole. Indeed, even if this consideration were to be given some weight in part, this would not get anywhere near clearly outweighing the significant cumulative harm identified to the landscape character of the site and wider area.
22. Moreover, I again note the appellant's reference to another appeal decision⁴ where an Inspector concluded that the presence of previously developed land could be considered 'a plus in the consideration of the planning balance'. However, in that case he concluded that approximately 90% of the site constituted previously developed land, very significantly more than that identified here. Accordingly I afford this case only very limited weight in relation to that currently before me.
23. For all these reasons therefore, I conclude the proposals would cause significant and material harm to the landscape character of the area, and so conflict with policy SWDP21 of the SWDP which anticipates that all development will be of a high design quality and will integrate effectively with its surroundings and ensure that the distinct identity of settlements will be safeguarded. It would also be in conflict policy SWDP25 of the same, which requires that development integrate with its landscape setting.
24. Insofar as the proposals would fail to safeguard the open countryside, in addition to the technical breach in policy identified in relation to the first main issue, they would conflict with policy SWDP2 of the SWDP, which identifies such an aim as one of its key principles. For the same reasons I also find that it would conflict with one of the core planning principles of the Framework, namely that planning should take account of the different roles and character of different areas and that intrinsic character and beauty of the countryside should be recognised.

Conclusion

⁴ Appeal ref: APP/J1860/W/15/3062074.

25. I readily accept that the proposals would make a modest but positive contribution to the housing supply of the area, and in the context of paragraph 47 of the Framework, this may properly be apportioned weight in support of it. Moreover, I also accept that its location in proximity to local services and facilities, when viewed in such policy terms, may too be weighed in its favour.
26. However, I have found the proposal to be in clear conflict with the policies of the development plan in respect of the landscape character of the open countryside and these harms clearly outweigh the benefits identified above. Despite its locational sustainability, this does not render the proposal a form of sustainable development for which the Framework presumes in favour. Indeed, conflict with the policies of the Framework in addition to those of the development plan, in the absence of material considerations that dictate otherwise, requires that, having considered all matters raised, the appeal is dismissed.

David Morgan

Inspector