

Appeal Decision

Hearing held on 2 February 2017

Site visit made on 3 February 2017

by Paul Singleton BSc (Hons) MA MRTPI

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

Decision date: 07th March 2017

Appeal Ref: APP/J1860/W/3159764

Land between Church Lane and Broadwas Primary School, Broadwas, Worcestershire WR6 5NE

- 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 outline planning permission.
 - The appeal is made by Wolverley Homes Ltd against Malvern Hills District Council.
 - The application, Ref 16/00415/OUT, is dated 11 March 2016.
 - The development proposed is outline application, with all matters reserved, for a residential development on a Rural Exception Site of up to 20 dwellings, of which 9 (45%) are to be affordable dwellings, with associated new access and car parking, on-site biodiversity area, public open space and infrastructure.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The development plan for the area comprises the South Worcestershire Development Plan (SWDP) adopted in February 2016. The policies within the plan are referenced by the use of the letters SWDP followed by the policy number (for example SWDP 2). I have adopted that same approach when referring to the relevant policies in this decision.
3. A Statement of Common Ground has been agreed between the Council and the appellant and I have had regard to that document in my determination of the appeal. The main parties have also submitted a signed legal agreement, prepared under the provisions of Section 106 of the Town and Country Planning Act 1990, (S106 Agreement) which includes obligations relating the delivery of the proposed affordable homes and the provision and future management of on-site open space.

Main Issues

4. The main issues are:
 - (a) Whether the proposal satisfies the requirements for a rural exception site having regard to relevant local and national policy;
 - (b) The effect on landscape character and visual amenity;
 - (c) The effect on the setting and significance of nearby designated heritage assets;
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- (d) Whether the proposal would make effective use of the appeal site; and
- (e) Whether the proposal would provide an appropriate mix of housing.

Reasons

Rural Exception Site

5. The appeal site lies outside the defined development boundary for Broadwas and is within the open countryside. Part C of Policy SWDP 2 states that, in the open countryside, development will be strictly controlled and will be limited to a small number of specific types including development on a rural exception site (RES). SWDP 2 Part F requires that development proposals should be of an appropriate scale and type with regard to the size of the settlement, local landscape character, location and the availability of infrastructure. It was agreed at the hearing that Part F is applicable to RES proposals.
6. Policy SWDP 16 is specifically concerned with RES schemes. It provides for the development of affordable housing on small sites beyond, but reasonably adjacent to, the development boundaries of villages where:
 - i. There is a proven and as yet unmet local need;
 - ii. No other suitable and available sites exist within the development boundary of the settlement; and
 - iii. Secure arrangements exist to ensure that the housing will remain affordable and available to meet the continuing needs of local people.

Part B of the policy states that, where viability for 100% affordable provision cannot be achieved, an element of market housing may be included to provide sufficient cross subsidy to facilitate the delivery of affordable homes.

7. SWDP 16 is consistent with paragraph 54 of the National Planning Policy Framework (Framework) which advises that, in rural areas, local planning authorities should plan housing development to reflect local needs, particularly for affordable housing, including through RES where appropriate. As an exception to the general presumption against the development of new houses in the open countryside, the policy sets a high bar in terms of the requirement for clear evidence of a proven and unmet local need for affordable housing.
8. The High Court judgment in the Old Hunstanton case¹ confirmed that RES policies are intended to meet local need for affordable housing in rural communities rather than a wider need within the local authority area. Paragraph 4 of the Reasoned Justification to SWDP 16 emphasises that exception sites must meet local needs and states that 'local need' is to be interpreted as a need within the relevant parish and adjoining parishes.
9. The application submission and appeal statement promoted the proposal on the basis of an affordable housing need within Broadwas and Cotheridge which, although two separate parishes, are closely linked and have a joint Parish Council. At the hearing the appellant sought to introduce information as to the need in other nearby parishes. Some of the figures put forward were questioned by objectors and the Council confirmed that two of the adjacent parishes have had no Housing Needs Survey (HNS) and that the HNS for two

¹ Old Hunstanton Parish Council v Secretary of State for Communities and Local Government [2015] EWHC 1958 (Admin)

others is known to be out of date. As this new evidence had not previously been seen by the Council or the other interested parties it could not properly be tested at the hearing. For this reason I am unable to afford that additional information any weight and have considered the proposal on the basis of the evidence produced in the application submission and the appellant's statement of case.

10. If the housing provided on a RES is to be taken up by local people with a genuine need it is important that the proposal be designed to meet a clearly identified need, both in terms of the number of homes and the mix of house sizes and tenures proposed. In that context, I consider that the HNS carried out in 2004 is now so dated that it cannot be taken as providing any indication as to the scale or nature of the current need for affordable homes.
11. Although the 2011 Broadwas and Cotheridge HNS is more recent, the questions asked in that survey were specifically about existing or likely needs over the next 5 years. Insofar as the HNS provides a picture of future needs the currency of that information is effectively time limited to June 2016 and the circumstances of the respondents (and, hence, their accommodation needs or aspirations) may have changed considerably since 2011. Paragraph 2.10 of the Affordable Housing Supplementary Planning Document (SPD), advises of the need for an up to date, parish level HNS to justify the provision of affordable housing on a RES. In light of that advice the 2011 HNS cannot be relied upon as evidence of a current, unmet local need.
12. The 2011 HNS shows that, of the 15 respondents who indicated a need for affordable housing, only 10 stated a local connection with the area. Six affordable homes have subsequently been built or are under construction. Hence, even if they were up to date, these findings would suggest a residual need for a maximum of 4 affordable homes rather than the 9 proposed in the appeal scheme. I accept that the nature and extent of the survey imposes certain limitations on the coverage of the HNS but have seen no evidence to suggest that a significant number of people with a genuine need and a local connection will have been missed by that survey.
13. The data from Home Choice Plus demonstrates a need for affordable housing across the Malvern Hills district. However, as none of the 58 people registered have indicated a local connection to Broadwas and Cotheridge, this most up to date information suggests that there is no current and unmet local need. That conclusion is supported by the evidence that, although initially marketed to people with a local connection, the 3 affordable homes at Berryfields Close have been allocated to people without such a connection. The appellant referred to the large number of bids that have been made on affordable homes in other nearby parishes but no information is available as to what proportion of those submitting such bids could demonstrate a local connection with the parish or parishes concerned. Hence, this information does not provide the evidence of a proven and unmet local need that is required to justify the development of land in the open countryside for a RES scheme.
14. For these reasons I find that the appellant has not demonstrated a proven and unmet need for the 9 affordable homes proposed in the appeal. In the absence of clear evidence of that need there is no justification for the provision of the proposed open market dwellings and I do not need to come to a final conclusion on the viability evidence discussed at the hearing. However, I do

have concerns about the appellant's approach to the viability assessment. I agree with the Council that the preferred approach would be first to assess what, if any, shortfall in viability there would be for a 9 unit affordable housing scheme and then to use those findings to identify what number of market housing units might be needed to achieve a viable scheme.

15. No definition is given in the SWDP of what might constitute a 'small site' for the purposes of Policy SWDP 16. However, in order to meet the strict policy requirements for a RES proposal, the site should only be as large as is needed to provide for the delivery of the agreed number of affordable homes (to meet the proven level of need) together with any market housing required to secure their delivery. The reference in SWDP 16 to '*sufficient cross-subsidy*' to facilitate the delivery of affordable homes clearly indicates that the market housing component should be the minimum necessary to achieve that objective. Paragraph 3.39 of the Affordable Housing SPD confirms this approach, stating that what is meant by small will, in part, depend upon the size of settlement and the amount of market housing, if any, which may be required to make the development viable.
16. The proposed development would represent a significant extension of the built area of Broadwas and a large increase in the size of the village community. The proposal would not be consistent with the SPD guidance in this respect. Neither can the site be considered to meet the 'small site' test when the need for 9 affordable and 11 market homes has not been proven.
17. I therefore find that the proposal conflicts with SWDP 16. As it does not fall within any of the other exceptions with regard to new housing in the open countryside, it also conflicts with Part C of Policy SWDP 2.

Landscape character and visual amenity

18. The application was submitted in outline with all matters reserved and the appellant confirmed at the hearing that the Indicative Site Layout is to be regarded as indicative only. It is not possible, at this stage, fully to assess what the effects of the proposal on landscape character and the visual amenity of the area might be and I accept that measures could be adopted in the detailed layout and design to minimise or mitigate any adverse effects. Notwithstanding those considerations, the granting of outline planning permission would establish the principle of a substantial amount of built development across a large open site fronting the main (A44) road through Broadwas.
19. Due to its location and its long frontage to the A44 the appeal site forms a substantial physical and visual break between the historic core of the village, centred on the church and Broadwas Court, and the main area of the modern settlement. The front boundary hedge provides good screening of the site in views from the adjacent footpath. However, from the higher ground to the north the site and the open land to the south can be seen over the top of that hedge. Wide, open views are available from public vantage points, such as the car park and beer garden to the public house and the access road to the village hall, and from a number of the dwellings and gardens on that side of the road. From Church Lane there are open views across the site towards the main part of the village and the appeal site contributes to a strong sense of openness when seen in these various views.

20. By introducing built development along the length of the site the proposal would result in a substantial erosion of the gap between Church Lane and the main part of the village and would severely diminish that sense of openness. The appellant proposes an area of open space on part of the site but this would likely be of a very different appearance to the existing agricultural use and, in combination with the extent of built development proposed, would radically change the rural character of the site.
21. Some 20% of the hedge to the roadside boundary would need to be removed for the construction of the site access. Although part of this could be replaced behind the visibility splay it would take many years for the new hedge to become established. It would also stand out as being of a different form and character to the retained hedge to the rest of the frontage. The construction of the site access and access road would also bring about a substantial change in the character and appearance of this part of the village. Taken together, these changes would have a significant adverse effect on the character of the village and on its setting within the rural landscape.
22. As indicated on the site layout plan, it may be possible to safeguard open views of the Malvern Hills from the area in front of the public house. However, other public views are likely to be affected to a significant degree and this would cause harm to the visual amenity of the village and its community. Some of the proposed dwellings would intrude into views from a small number of residential properties on the north side of the A44. However, in view of the likely separation distances between the existing and proposed new houses and the screening provided by existing and proposed vegetation, there would be limited risk of any significant impact on the outlook from those properties.
23. In summary, I find that significant harm would be caused to the landscape character of the village and its rural setting and that some, more limited, harm would be caused to the visual amenity of the area. The proposal would conflict with Part A of Policy SWDP 25 which requires that development proposals should be appropriate to, and integrate with, the character of the landscape setting and should take every opportunity to enhance the landscape. Together with the harm resulting from the development proposal being out of scale with the existing settlement, this harm to landscape character would also give rise to a conflict with Part F of SWDP 2.

Designated heritage assets

24. Stone Farmhouse (listed with Grade II* status) is a timber framed farmhouse, part of which is medieval with later 16th and 17th Century extensions. It has individual value as well as value as part of a group with the former barns and stables to the north and west. A visual relationship with those buildings has been maintained and the group derives a strong sense of enclosure from the tall and dense vegetation on the eastern boundary of the group and that on the opposite side of the A44. Public views of the building are limited to a relatively short section of the road and views from the building out across the wider area are severely restricted.
25. This group of buildings is experienced as being separate from the main area of the village and has a predominantly rural setting. Based on the submitted evidence and my assessment on the site visit, I consider that the setting of the listed building is limited to its immediate curtilage, the site and curtilage of the associated barns and stables, and the paddock to the north.

26. There is very little intervisibility between the listed building and the appeal site and no evidence has been produced to suggest any functional or historic connection between the two. I therefore find that the appeal site does not make any meaningful contribution to the setting of Stone Farmhouse and consider that the proposal would not have an adverse effect on the setting or significance of that listed building. I have reviewed the findings of the Inspector who determined the appeal for development to the north of the listed building² but those findings do not alter my own conclusions as to the minimal contribution which the appeal site makes to the setting of Stone Farmhouse.
27. Ivy House Farmhouse (Grade II listed) has 17th Century origins with later additions and stands within a group of former agricultural buildings which have been converted for residential use. Due to its elevated position the building is prominent in views along the A44, from the playing fields, and from Church Lane from where it can be seen across the open land of the appeal site. Its front boundary hedge screens part of the building but is not of uniformly great height and, in both close and more distant views, the considerable age and original function of the building as a farmhouse can readily be discerned.
28. There is intervisibility between the farmhouse and parts of the appeal site and, due to its elevated siting, the farmhouse commands views across the agricultural land to the south and to the Malvern Hills beyond. The site is separated from the listed building by a busy main road and no evidence of a past, functional link between the two has been submitted. However, the appeal site and the larger field of which it forms a part do provide a strong link with the building's rural surroundings and make a positive contribution to its setting. The appeal proposal would introduce a modern, suburban form of development into that currently open setting and would have a harmful effect on the setting and significance of the designated asset. Taking account of the intervening road and the screening provided by the boundary hedge to the farmhouse, the scale of that harm would be low.
29. Although a large number of rural churches are listed, the Parish Church of St Mary Magdalene (listed Grade II*) is of particular interest and significance because of its unusual timber framed and clad bell tower; indeed, Dr Wardle suggested that it could arguably qualify for Grade I listing because of this feature. The church forms part of the historic core of the village and is separated from the main body of the settlement by the appeal site.
30. The wall and vegetation to its eastern boundary provide a strong sense of enclosure to the churchyard and the two modern bungalows on the adjoining land help to block views from this area. However, I saw on my site visit that longer distance views are obtainable from the northern part of the churchyard and that these include views of Ivy House Farmhouse and the former granary to the west of that building. I also noted that the gable walls and roofs of the new houses in Berryfields Close are prominent in these views.
31. The intervening buildings, walls and vegetation largely screen views of the church from the appeal site itself. However, the bell tower and part of the main roof can be seen from more elevated positions, such as the public house car park and beer garden, from where the available views are across the corner of the appeal site. More direct views of the church are available from the

² APP/J1860/W/15/3032510 dated 17 November 2015

- playing fields but these are to the rear of the Berryfields Close houses and would not be affected by the appeal proposal.
32. It seems to me that the physical separation and detachment of the church from the main part of the village is of importance in understanding the origins of the church and its significance within the small group of buildings in the historic core, and the subsequent development of Broadwas as a settlement. That detachment and apparent remoteness of the church is likely to form part of the way in which the building is experienced, whether by local people who walk to and from the church on a regular basis or by new or occasional visitors. Both because of the views that its open nature allows, and because it is a critical component in the physical and visual detachment of the church, I consider that the appeal site does form part of the setting of the listed building.
33. Even at the relatively low density proposed, development of the appeal site would substantially reduce that separation and would dilute the sense of detachment of the church from the rest of the village. This would be a permanent and irreversible change and would, in my view, give rise to moderate harm to the setting and significance of a Grade II* asset.
34. The parties agree that the harm to the significance of the designated heritage assets would be less than substantial. Paragraph 134 of the Framework states that, where a development proposal would lead to less than substantial harm, that harm should be weighed against the public benefits of the proposal. Paragraph 132 advises that, when considering the impact of a development on the significance of a designated heritage asset, great weight must be given to the asset's conservation and that the more important the asset, the greater the weight that should be given. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that, in carrying out the necessary balancing exercise, I should have special regard to the desirability of preserving the buildings or their settings.
35. I agree with the Council that the provision of new homes, including 9 affordable homes, would constitute a public benefit only if a proven need for the affordable homes had been demonstrated. As such a need has not been demonstrated I consider that only very limited weight should be given to the potential economic benefits that would flow from the construction activity and future occupation of the proposed homes and the proposed provision of green infrastructure on the site. Accordingly, I find that no public benefits have been demonstrated that would outweigh the harm to the setting and significance of the Grade II* listed Church of St Mary Magdalene and the Grade II listed Ivy House Farmhouse.
36. For these reasons I conclude that the proposal would conflict with the policies in Section 12 of the Framework and with Policy SWDP 6 which states that development proposals should conserve and enhance heritage assets.

Effective use of land

37. The appellant's Agricultural Use and Quality Report shows that the proposal would result in the loss of approximately 1.25 hectares (Ha) of agricultural land of Grade 3A quality. The absence of a proven need for the proposed housing means that this loss has not been demonstrated to be unavoidable. However, the loss of 1.25 Ha of such land would not, in my view, constitute a significant loss of best and most versatile land having regard to paragraph 112 of the

Framework. Part H of SWDP 13 states a presumption against the loss of more than 2 Ha of the best and most versatile agricultural land. The loss would be less than that figure and no conflict with that part of the policy would, therefore, arise.

38. Although the proposal is in outline the description of development limits the number of dwellings to a maximum of 20 on a site of around 1.7 Ha. Allowing for 40% of the site to be used as green infrastructure the net density would be around 21 dwellings per hectare (dph). This is significantly below the 30 dph average net density sought within villages under Part E of SWDP 13. I accept that the site is outside of the development boundary and that existing densities within parts of the village are lower. However, in the absence of a proven need for the proposed dwellings, I find that the appellant has not demonstrated that the proposal would make effective use of the site. The proposal does, therefore, conflict with Policy SWDP13 in this respect.

Housing Mix

39. The appropriate mix for the affordable housing element of a RES proposal should properly be informed by up to date evidence of a proven and unmet local need. In the absence of such evidence I am unable to conclude that the mix of housing types and tenure proposed would be appropriate to meet such a need or to encourage take up of the proposed homes by people with a local connection to the Broadwas and Cotheridge parishes.
40. Where evidence of a local need for affordable homes does exist the viability appraisal should identify what level of cross subsidy is required to facilitate the delivery of those homes. With that information in place the developer and the local authority could discuss, with reference to overall needs in the area, whether that cross subsidy would best be provided by a small number of large market houses or a greater number of smaller ones. That discussion has not taken place in this case.
41. I acknowledge the appellant's frustration about the alleged lack of response from the Council prior to the lodging of the appeal and the indication that they would have welcomed such discussions. However, I have no evidence before me to demonstrate that the proposed mix, within which 73% of the market dwellings would be of 4 bedrooms or more, is either a necessary or the best option to secure the delivery of affordable housing on the site. The proposal is, therefore, at odds with the Council's Strategic Housing Market Assessment and conflicts with Part A of Policy SWDP 14 and its underlying objectives of supporting mixed and balanced communities.

Other Matters

42. A number of objectors have referred to past flood events and have expressed concerns that the proposal might increase the risk of flooding. My reading of the appellant's Flood Risk Assessment (FRA) suggests that the risk of flooding on Church Lane and the A44 has been taken into account in that assessment. The FRA has been assessed by the relevant technical consultees who have raised no objections to the proposal on these grounds. Hence, I have no evidence to suggest either that the appeal site would be at risk of flooding or that the proposed development would lead to an increased risk of flooding elsewhere.

43. Paragraph 204 of the Framework and Regulation 122 of the Community Infrastructure Regulations require that planning obligations should only be sought, and that weight be attached to their provisions, where they are: necessary to make the development acceptable in planning terms; directly related to the development proposed; and are fairly and reasonably related in scale and kind.
44. As a RES scheme the delivery of affordable homes and the need for long term arrangements to secure their continued availability for affordable housing use is necessary to make the development acceptable in planning terms. The obligations in the S106 Agreement are fairly and reasonably related to the achievement of those objectives. Policies within the SWDP require the provision of on-site open space in order to make the development acceptable. The S106 obligation requiring the submission of a scheme to indicate how this requirement would be met and what arrangements would be made for the future management and maintenance of the open space is an appropriate way of dealing with these matters at the outline planning stage.
45. I am, therefore, satisfied that the obligations included in the S106 Agreement meet the necessary tests and that they can be afforded weight. For the reasons set out above these obligations should not, however, be regarded as public benefits of significant weight.

Conclusions

46. For the reasons set out above I find that insufficient justification has been provided for the development of the site as a RES. Hence, the proposal would constitute development in the open countryside and would also result in harm to the landscape character and visual amenity of the settlement. It would also cause harm, at a less than substantial level, to the setting and significance of two designated heritage assets that would not be outweighed by any public benefits. The appellant has not demonstrated that the proposal would achieve the effective use of the site or an appropriate housing mix having regard to the Council's objectives of securing sustainable communities.
47. The proposal conflicts with a number of policies within the SWDP and with the development plan as whole. There are no material considerations which would outweigh the harm that I have identified or the resultant development plan conflict. Accordingly, the proposal would not constitute sustainable development having regard to the policies in the Framework.
48. For these reasons and having regard to all matters raised I conclude that the appeal should fail.

Paul Singleton

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Richard Parsons	Partner	Wolverley Homes Ltd
Ken Pugh	Director	Wolverley Homes Ltd
Robert Csondor	Managing Director	RCA Regeneration
Jack Barnes	Development Consultant	RCA Regeneration
Anna Treby	Landscape Architect	MHP Design
Dr Peter Wardle	Director	The Historic Environment Consultancy

FOR THE LOCAL PLANNING AUTHORITY:

Stuart Castle	Senior Planning Officer	MHDC
Bryony Taylor	Conservation Officer	MHDC
Emma Jordan	Housing Development Officer	MHDC
Corin Beames	Assistant Town Planner	MHDC
Charles Potterton	Principal	Potterton Associates Ltd
David Coate	Regional Director	Adams Integra

INTERESTED PERSONS:

Louise Morton	Director, Quadrant - instructed by Mr Newell and other local residents
Geoffrey Winkworth	Chairman, Broadwas and Cotheridge Parish Council
Jim Norris	Local Resident
Jan Norris	Local Resident
Nicholas Newell	Local Resident
Margo Newell	Local Resident
Elizabeth Hill	Local Resident
Melvin Cole	Local Resident
Derek Woodhall	Local Resident

DOCUMENTS SUBMITTED AT THE HEARING

Notification of Appeal Hearing Date and Venue

Map of Parishes within MHDC area

Plan from Strategic Housing Land Availability Assessment

DOCUMENTS SUBMITTED AT THE HEARING

Glossary to the South Worcestershire Development Plan

List of residents represented by Quadrant

Signed S106 Agreement