
Appeal Decision

Site visit made on 21 February 2017

by Jonathan Tudor BA (Hons), Solicitor (non-practising)

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

Decision date: 06 April 2017

Appeal Ref: APP/J1860/W/16/3164684

The Oaks, Bell Lane, Lower Broadheath, Worcestershire WR2 6RR

- 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 Candy against the decision of Malvern Hills District Council.
 - The application Ref 16/00070/FUL, dated 18 December 2015, was refused by notice dated 15 November 2016.
 - The development proposed is replacement of 1 no. dwelling and erection of 4 no. dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for replacement of 1 no. dwelling and erection of 4 no. dwellings at The Oaks, Bell Lane, Lower Broadheath, Worcs WR2 6RR, in accordance with the terms of application, Ref 16/00070/FUL, dated 18 December 2015, subject to the attached schedule of conditions.

Main Issues

2. The main issues are:
 - whether the proposed development would be in a suitable location, given that the appeal site lies outside the development boundary; and,
 - the effect of the proposed development on the character and appearance of the area.

Reasons

Suitable location

3. Part of the appeal site fronts onto Bell Lane opposite the Dewdrop Inn public house. It then extends back and south west behind existing residential development along Bell Lane and Sling Lane with some further houses to the north east. There is an existing single storey house on the site, which is to be replaced, and the rest of the land comprises a grassed paddock or field. Beyond to the east lie further agricultural fields.
4. South Worcestershire Development Plan (SWDP)¹ policy SWDP 1 sets out the Council's overarching sustainable development principles whilst SWDP 2 comprises its development strategy and settlement hierarchy. SWDP 2 aims to focus most new housing on Worcester and other urban areas and to strictly

¹ Adopted February 2016

control development in the open countryside, which is defined as land beyond any development boundary. The proposal does not meet any of the exceptions specified in the policy.

5. Though the site is outside the development boundary, it is within 630 metres of it and Lower Broadheath is identified as a category 1 village, which SWDP 2 says are suited to accommodate market and affordable housing needs. According to the appellant, Category 1 villages, defined in the 'Village Facilities Survey and the Rural Public Transport Survey' (2012), have at least four key services and access to daytime public transport.
6. Furthermore, the appeal site is opposite a public house and bounded by existing residential development on three sides. It is a relatively short walk or cycle along Bell Lane to a village shop and a public house before one turns and continues north west into the main part of the village with its Church, school and memorial hall. The route along Bell Lane, unlike many rural roads, benefits from a pavement on one side, which though narrow is of a reasonable width. The road through the village also has a pavement.
7. There are bus stops not far from the entrance to the appeal site, though a local resident suggests that the bus service is limited. Nevertheless, the Council accepts that the site is not 'isolated' in terms of paragraph 55 of the National Planning Policy Framework (the Framework) and that the provision of new housing could help to enhance or maintain the vitality of existing services and facilities in the village. I recognise that the Council advises that it can demonstrate a five year housing land supply but that is a minimum rather than a maximum requirement.
8. Four recent appeal decisions² in the Malvern Hills District Council area are cited by the appellant in support of the proposal. In the Brookend Appeal, concerning the demolition of existing buildings and erection of 4 dwellings, the Inspector decided that though the proposal was outside the development boundary and did not meet any of the SWDP 2 exceptions; its relatively small scale and benefits outweighed any harm. Furthermore, he did not consider that the scheme would jeopardise the strategy set out in SWDP 2 to focus most development on urban areas.
9. An Inspector expressed similar reasoning with regard to SWDP 2 in another Appeal Decision, concerning Land Adjoining Brookmead, which also involved a proposal for four new dwellings. Appeals at Tansy Cottage and The Garden House concerning proposals outside the development boundary and in conflict with SWDP 2 were also allowed.
10. A local resident has suggested that the appeal decisions are not comparable with the proposal for various reasons, including that they are allegedly linear developments along a highway or are for the erection of single dwellings. I take a different view, as the decisions all deal with proposals outside the development boundary which contravene that aspect of SWDP 2. Therefore, I consider that they are all relevant to the appeal before me and I find their line of reasoning persuasive.
11. I agree with the Council that the site is not isolated and find that the development would help to maintain and enhance the viability of local services

² APP/J1860/W/15/3135877, APP/J1860/W/16/3155541, APP/J1860/W/16/3152030 and APP/J1860/W/16/3153506

and facilities. It would contribute to the vitality of the community in accord with paragraph 55 of the Framework. It would also make an economic contribution during the construction period and subsequently from future occupiers. In social terms, there would be a contribution to the supply of housing and occupiers would potentially participate in the local community. Though it is a relatively modest development, all such contributions have a value.

12. Environmentally, it would involve development on some agricultural land but part of the site is already occupied by a residential dwelling and there is existing development on three sides. I will discuss that aspect in more detail in relation to character and appearance below.
13. There is a breach of Policy SWDP 2 C, in terms of the position of the appeal site outside the development boundary and the failure to meet the exceptions in the policy. However, I consider that the appeal site has more affinity with the village than the open countryside, which the policy is primarily designed to protect. As there would also be clear benefits from the scheme, I conclude that the other material considerations which I have identified outweigh the conflict with SWDP 2 C and that the proposed development would be in a suitable location. Consequently, it is not contrary to the overreaching sustainability aims of the SWDP as a whole which are consistent with the Framework.

Character and appearance

14. In its Officer's Report the Council refer to policies SWDP 21, which relates to design, and SWDP 25, concerning landscape character, though I note that only SWDP 2 and SWDP 21 are referred to in the decision notice. The Council asserts that the development would fail to integrate with its surroundings in terms of size, scale, form and function. It also says that it would fail to reinforce local distinctiveness and be significantly at odds with the character of the area. However, no detailed explanation of the reasons for those conclusions is provided.
15. As confirmed in the Officer's Report, there is a mix of residential housing in the area. It includes detached two-storey houses and bungalows and some semi-detached properties, dating from the 18th, 19th and 20th centuries in a range of styles. Therefore, I do not see that four two-storey houses and one bungalow, albeit with some modern design elements, would be out-of-keeping, in terms of size, scale, form or function, with the varied character of other dwellings in the area. Nor do I consider that the proposal would adversely affect local distinctiveness. A materials condition could be attached to ensure that the external facing materials would be sympathetic to the surrounding area, if planning permission were granted.
16. With regard to the pattern of development in the locale, the proposal would be to the rear of existing development. It has been suggested that most development in the area is linear alongside roads. However, there are already houses, Broadlands and Innisfree, to the rear of development along Bell Lane adjacent to the appeal site and beyond its eastern boundary. Furthermore, the appellant has provided examples of dwellings located on private driveways or cul-de-sacs to the rear of development on Crown East Lane, Laycocks Lane, and Bell Lane itself. A local resident has suggested that those sites are not comparable but I find the appellant's evidence persuasive and note that it has not been refuted by the Council.

17. In any event, as I saw on my site visit, the appeal location is mostly screened from Bell Lane by existing development, trees and vegetation. It is similarly largely screened from Sling Lane and the adjoining common by residential housing and associated vegetation. Any public views from those directions would be mainly between and in the context of existing built form. The appellant also refers to an additional landscape buffer consisting of new planting around the site which would further dissipate views and make a contribution to the landscape.
18. There would be some visibility of the site from the beginning of public footpath 560(B) but that would be between existing housing. There would also be more distant views from public footpath 609(C) to the east but those views would be against the backdrop of existing housing along Bell Lane and Sling Lane. In any case, such issues could be mitigated by an appropriate landscaping condition.
19. Whilst the high quality of the open countryside may well be an important planning attribute of Lower Broadheath, as asserted by the Council, it does not explain why the scale or type of proposed development would compromise it. It also refers to the quality of the area but does not expand on how that is defined, what characterises it and in what way the development would have a negative effect on it. Therefore, for the reasons already explained, I do not consider that a relatively small-scale proposal on a site with a dwelling in situ, encompassed by existing development on three sides, would adversely affect the area.
20. Though not referred to by the Council, the appellant and some local residents have said that the appeal site is located on land which is part of an area identified as a 'significant gap' on the SWDP Policies Map. SWDP2 D states that development proposals should ensure the retention of the open character of 'significant gaps'. The reasoned justification for the policy explains that the purpose of maintaining these gaps, which either serve as a buffer or visual break between rural settlements and adjacent urban areas or protect the character and setting of settlements, is to provide additional protection to open land that may be subject to development pressures.
21. As the proposal is relatively small-scale and would occupy a limited area of land to the rear of a crescent of existing development adjacent, it would not represent a major incursion. Nor would it reduce the separation between urban areas or significantly affect visual openness or the character or setting of the settlement.
22. The above factors lead me to conclude that the proposed development would not harm the character and appearance of the area. It follows that it would not conflict with policy SWDP 21 of the SWDP, insofar as it seeks to secure high quality design which integrates effectively with its surroundings, in terms of form and function.
23. Policy SWDP 2 is also referred to in the second reason for refusal on the Council's decision notice, presumably on the basis that the appeal site is defined as open countryside. The breach of SWDP 2 C is recognised but I have not identified material harm to the character or appearance of the open countryside and do not, therefore, find that the purpose of SWDP 2 is offended. In any case, I consider that the benefits of the proposal, which I have already

outlined, outweigh any breach and that the scheme is in accord with the overall aims of the SWDP as a whole and the Framework.

Other Matters

24. I appreciate that the proposal has been subject to a number of objections from both the Parish Council and local residents. In addition to the matters already discussed, a range of issues have been raised. It has been suggested that a separate planning application on the site is pertinent in relation to s106 contributions. I note that the Council has not referred to any relevant connection with another application. I will deal with s106 contributions further below. In any case, my task is to consider the appeal before me.
25. It is suggested that allowing the appeal would set a precedent. Again, I note that the Council has not raised that as an issue. Any future planning applications or appeals would be decided on their own particular merits.
26. Concerns have been expressed about loss of privacy and light. The Council in assessing the application has not found any adverse effect on the living conditions of nearby occupiers. Therefore, whilst I have considered those aspects, I find that the distance between the proposed and nearby dwellings combined with appropriate landscaping would sufficiently mitigate any significant adverse effects. Noise pollution has also been mentioned but, given the proximity of other existing development, I do not consider that any increase associated with the dwellings would be significant.
27. Highway safety has been cited as a concern but the Council and the relevant highway authority have raised no objection, subject to appropriate conditions which are included in the schedule. I also note that the relevant section of Bell Lane has a 30mph speed limit. Therefore, I do not share that concern.
28. Ecological matters have been raised but the appellant provided a Preliminary Ecological Assessment which concludes that no harm would result to ecological interests subject to conditions. Subsidence has been referred to but again the Council do not consider that significant and I concur with that view. The effect of any proposed landscape buffer and associated planting could be dealt with by condition. Flooding and drainage have been referred to by third parties but the Council's Land Drainage Engineers have not objected, subject to a condition for a sustainable drainage scheme, which is included. Land contamination has been raised but the Council has expressed no concern on that issue and I share its view.
29. Some nearby residents have referred to the loss of views from their properties. The planning system does not generally protect private views though there is protection offered if a development is considered overbearing. The Council do not consider that the proposal would be and I share that opinion.

Conditions

30. The Council has suggested conditions which I have considered, making minor amendments if necessary to ensure compliance with the tests contained in the Planning Practice Guidance. A condition setting a time limit for commencement of the development is required by statute. It is appropriate that there is a condition requiring the development to be carried out in accordance with the approved plans for certainty. Conditions relating to landscaping, the parking and turning area, access, visibility splays and a construction management plan

are all necessary to enhance the environment and for highway safety reasons, respectively.

31. A drainage condition is required to ensure an appropriate drainage system for the development and to reduce the risks of flooding and pollution. Conditions regarding trees and root protection area measures along with ecological mitigation are necessary to safeguard existing trees and to make appropriate provision for protected species. A conditions restricting the hours of construction is included to protect the living conditions of nearby residents.
32. Conditions relating to telephone systems, broadband, energy, water management, parking for cycles and outside electrical sockets are appropriate to comply with the sustainability principles of local and national policy. A condition relating to ground and building floor levels is necessary to protect the living conditions of neighbours and a materials condition is appropriate to ensure that those used are in keeping with the area.
33. The Council has suggested a condition requiring the appellant to enter into a unilateral agreement to make a payment towards affordable housing. Government policy as expressed in the Written Ministerial Statement (WMS) dated 28 November 2014, to be read alongside the Framework, states that for sites of 10-units or less, and which have a maximum combined floor space of no more than 1,000 square metres, affordable housing and tariff style contributions should not be sought. In designated rural areas under s.157 of the Housing Act 1985 authorities may choose to implement a lower 5-unit or less threshold.
34. The proposed development is below those thresholds. The status of WMS as a material consideration in planning decisions was restored following a Court of Appeal judgement issued on 11th May 2016³, which post-dates Policy SWDP15 of the development plan and was prior to the Council's decision. The Planning Practice Guidance⁴ has been amended to reflect the WMS. The WMS is an important material consideration to which I attach significant weight and in this instance is sufficient to indicate a decision other than in accordance with the development plan. Therefore, I have not included that suggested condition.
35. I have also not included another condition suggested by the Council which would restrict permitted development rights. Though the Council advise that the intention is to protect the character and appearance of the buildings the Planning Practice Guidance⁵ states that such restrictions should only be imposed in exceptional circumstances. I do not consider that such a condition is necessary to enable the development to take place.

Conclusion

36. For the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be allowed.

Jonathan Tudor

INSPECTOR

³ Secretary of State for Communities and Local Government v West Berkshire District Council and Reading Borough Council C1/2015/2559[2016] EWCA Civ 441

⁴ Planning Practice Guidance: Paragraph: 31 Reference ID: 23b-031-20160519

⁵ Planning Practice Guidance: Paragraph: 017 Reference ID: 21a-017-20140306

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Zeb 878 102; Zeb 878-105 Rev A; Zeb 878-100 Rev A; Zeb 878-101; Zeb 878-111 Rev A; Zeb 878-112 Rev A; Zeb 878-113 Rev A; Zeb 878-114 Rev A; Zeb 878-115 Rev A.
- 3) Within 3 months the date of this permission, a scheme of landscaping shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be carried out concurrently with the development and completed within one year of substantial completion of the development. Any trees or shrubs dying or becoming seriously diseased within five years of planting shall be replaced by trees or shrubs of similar size and species to those originally required to be planted. The landscaping/planting required to be carried out shall thereafter be retained and maintained in accordance with the approved scheme.
- 4) The development hereby permitted shall not be occupied until the driveway/turning area and parking facilities shown on the approved plan have been properly consolidated, surfaced, drained and otherwise constructed in accordance with details to be submitted and approved in writing to the local planning authority and these areas shall thereafter be retained and kept available for those users at all times.
- 5) Prior to the commencement of the development hereby approved a scheme for surface water drainage shall be submitted to, and approved in writing by the local planning authority. Prior to submission of the scheme an assessment shall be carried out into the potential of disposing of surface water by means of a sustainable drainage system (SuDS), and the results of this assessment shall be submitted to and approved by the local planning authority. If infiltration techniques are used then the plan shall include the details of field percolation tests. There shall be no increase in surface water run-off from the site compared to the existing pre-application run-off rate up to a 1 in 100 year storm event plus an appropriate allowance for climate change. The scheme shall provide an appropriate level of runoff treatment. The scheme shall be implemented in accordance with the approved details before the development is first brought into use. As well as riparian responsibilities for existing watercourses, where a sustainable drainage scheme is to be provided, the submitted details shall:
 - a. 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;
 - b. include a timetable for its implementation;
 - c. provide a management and maintenance plan for the lifetime of the development which shall include robust arrangements to secure the operation of the scheme throughout its lifetime.

- 6) Demolition/ground works/construction work shall not take place outside the following hours:
 - i. Monday to Friday - 07.30-18.00 hrs
 - ii. Saturdays - 07.30-13.00 hrs.
 - iii. There shall be no such work on Sundays, Public or Bank Holidays.
- 7) No demolition, site clearance or building operations of any type shall commence until a protective fence (of at least 2 meters in height and in all other respects in accordance with BS 5837 (2012) *Trees in Relation to Design, Demolition and Construction* and previously approved in writing by the local planning authority), has been erected around the trees to be retained within the site and around those trees outside the site whose Root Protection Areas (RPA) (as defined in BS 5837 (2012)) fall within the site, at the outer limit (or beyond) of the their RPA or in a position agreed in writing by the local planning authority. This tree protective fencing should remain in place until all construction and associated ground-works have been completed. Any tree removed during the lifetime of the construction shall be replaced with a species to be agreed in writing by the local planning authority.
- 8) Prior to the commencement of the development full details of an ecological mitigation, habitat creation and enhancement scheme shall be submitted to and approved in writing by the local planning authority. These details shall incorporate all the findings in the Preliminary Ecological Survey (dated November 2015) completed by Worcestershire Wildlife Consultancy. The works shall thereafter be carried out in accordance with the approved details unless otherwise agreed in writing.
- 9) Unless otherwise agreed in writing by the local planning authority prior to the commencement of the development, proposed utilities connections to all residential dwellings upon the site should facilitate super-fast broadband connectivity (landline, mobile and wi-fi) including fibre optic rather than copper cabling where practicable.
- 10) No development shall commence until details of sustainability measures from renewable or low carbon sources equivalent to at least 10% of predicated energy requirements to be incorporated into the design of the dwellings hereby approved, to reduce energy usage and running costs for future occupiers have been submitted to and approved in writing by the local planning authority. The approved details shall be implemented in accordance with a timetable to be approved in writing by the local planning authority and retained thereafter.
- 11) Prior to the commencement of the development a Water Management Statement, setting out water efficiency measures shall be submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details before the development is first brought into use and retained thereafter.
- 12) Prior to the commencement of the development hereby permitted engineering details of the proposed access shall be submitted and approved in writing by the local planning Authority, and the development shall not be occupied until the scheme has been constructed in accordance with the approved details.

- 13) No works to remove trees or hedges shall take place during the 1st March and 31st July.
- 14) Prior to the first occupation of any dwelling hereby approved secure parking for cycles to comply with the Council's standards shall be provided within the curtilage of each dwelling and these facilities shall thereafter be retained for the parking of cycles only.
- 15) Provisions shall be made to facilitate an outside electrical socket to be supplied at each property to enable ease of installation of an electric vehicle charging point.
- 16) Before any other works hereby approved are commenced, visibility splays shall be provided from a point 0.6m above ground level at the centre of the access to the application site and 2.4metres back from the near side edge of the adjoining carriageway, (measured perpendicularly), for a distance of 43 metres in each direction along the nearside edge of the adjoining carriageway. Nothing shall be planted, erected and/or allowed to grow on the triangular area of land so formed which would obstruct the visibility described above.
- 17) No part of the development hereby approved shall begin until a Construction Management Plan to include details of:
 - a. Parking for site operatives and visitors
 - b. Area for site operatives' facilities
 - c. Parking and turning for delivery vehicles
 - d. Areas for the storage of plant and materials
 - e. Wheel washing equipmentshall have been submitted to, and approved in writing by, the local planning authority. The approved plan shall be implemented throughout the construction period.
- 18) Prior to the commencement of development, details of the proposed site ground and building floor levels shall be submitted to and approved by the local planning authority. The development shall be constructed in accordance with the approved details.
- 19) Prior to the commencement of development samples and trade descriptions of the external facing and roofing materials to be used in the construction of the development hereby permitted shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved detail.