

Appeal Decision

Site visit made on 2 May 2017

by Gareth W Thomas BSc(Hons) MSc(Dist) PGDip MRTPI

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

Decision date: 18th May 2017

Appeal Ref: APP/J1860/W/16/3165723

The Garage, Eardiston, Near Tenbury Wells, Worcester WR15 8JL

- 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 M and Mr D Yarranton against the decision of Malvern Hills District Council.
 - The application Ref 16/00661/OUT, dated 17 April 2016, was refused by notice dated 9 September 2016.
 - The development proposed is for residential development on a bus and coach garage and workshops (Resubmission of 15/01220/OUT).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application is expressed in outline with all matters except access reserved for future approval. I have considered this appeal accordingly.

Main Issues

3. The main issues in this appeal are whether the proposed development would:
 - (i) result in the loss of employment-generating use that ought to be protected;
 - (ii) represent a suitable location for development;
 - (iii) result in the over-development of the site;
 - (iv) have a significantly harmful effect on ecology, and;
 - (v) justify the provision of affordable housing and other infrastructure contributions.

Reasons

Loss of employment land

4. The appeal site consists of a number of buildings located in the heart of the village of Eardiston some 11km to the east of Tenbury Wells. The buildings are associated with an established longstanding bus and coach operator and comprise the appellants' dwelling together with a range of buildings including workshops, offices and reception. The site lies adjoining the village hall and
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slopes gently from the main road A443 towards the southern boundary beyond which are open agricultural fields.

5. It is a core planning principle of the National Planning Policy Framework (the Framework) at paragraph 17 that planning should proactively drive and support sustainable economic development and should deliver the business and industrial units the country needs. It also supports local planning authorities to promote policies designed to support economic growth in rural areas. However, the document at paragraph 22 also advises that where there is no reasonable prospect of a site being used for an allocated employment use, applications for alternative uses should be treated on their merits having regard to market signals and the relative need for different land uses to support sustainable communities.
6. The appeal site is presently in Class B2¹ use. The development plan includes the South Worcestershire Development Plan (SWDP) adopted in February 2016. Policy SWDP 12 of the SWDP sets out to safeguard sites for employment-generating uses in order to help promote rural regeneration. Proposals for alternative uses would need to demonstrate that the site has been actively marketed for employment, tourism, leisure or recreation purposes for a period of at least 12 months and that it is no longer viable for an employment-generating use. The policy is supported by an Annex which provides more detail on its application.
7. The appellants have not provided any evidence that the site has been effectively marketed and therefore cannot demonstrate that the site is no longer viable for the various forms of employment-generating uses listed in Policy SWDP12. What has been disclosed is that the present company employs 15 full-time employees and 6 part-time employees, which is a significant employer in local terms. Moreover, the appellants explain that it is their intention to relocate to new premises elsewhere in the locality, the precise location being unspecified. This seems to me to demonstrate at least in part that the business at this location continues to function successfully as a bus and coach operator. The loss of employment within Eardiston would be likely to have a negative effect on rural regeneration in this part of the District.
8. From my site visit I was able to observe that the appeal site appears somewhat restricted for modern day coaches and the buildings may not offer up-to-date facilities. However, the site could be attractive to other Class B1 uses or indeed as part of a redevelopment opportunity, which would assist in retaining or increasing the availability of employment premises in a key central location within the village and this part of rural Malvern Hills District. Furthermore, it is clearly the case that such opportunities would have regeneration benefits.
9. Considering the policy SWDP 12 factors together, in the absence of robust evidence to demonstrate that the site is no longer attractive or viable for alternative employment-generating uses, I conclude that the proposed development would have a significantly harmful effect on rural regeneration in the District, contrary to the provisions of policy SWDP 12. This Policy is consistent with the Framework that seeks to support a prosperous rural economy.

¹ The Town and Country Planning (Use Classes) Order 1987

Suitability of location

10. Policy SWDP 1 of the SWDP identifies the general presumption in favour of sustainable development. Policy SWDP 2 sets out the development strategy and settlement hierarchy for the area. This Policy aims to focus most development in urban areas where housing needs and accessibility to lower cost public services are greatest. Eardiston is identified as a category 3 settlement and under Policy SWDP 2, infill development within the defined development boundary may be deemed acceptable in principle, subject to the more detailed policies contained within the SWDP. There is a development boundary but there are no allocated sites identified for this village however.
11. The vast majority of the appeal site lies within the development boundary for Eardiston. The Council's principal concern under this main issue is that should development be permitted, then the status of Eardiston would effectively be downgraded from its present category 3 definition to category 4a. However, there does not appear to be any policy provision in the SWDP that caters for the promotion or relegation of villages during the plan period and which clarifies the implications that would arise as a consequence. In any event, Policy SWDP 2 would continue to support proposals for infill development within the defined development boundaries of Category 4a settlements albeit that development would be expected to be limited.
12. For these reasons, I do not consider the Council's position to be either persuasive or reasonable, nor can its approach be drawn from the words of the policy. Moreover, while it is open for the Council to review the status of settlements, it would be unusual to do so in the context of a single planning application. This would be best undertaken during the formal review of the development plan where a more robust assessment can be undertaken. I therefore conclude that as the SWDP has identified a development boundary for the village, the development would comply in principle with Policy SWDP 2.

Whether over-development

13. The proposals would see the erection of fourteen dwellings on site although this number is not fixed in the application particulars. Indicative layout plans have been provided that depicts a single means of access leading from the A443 together with necessary visibility splays that would serve a mix of housing including terraced, semi-detached and detached dwelling houses.
14. The Council's concern is that the proposed development would have a cramped appearance with few opportunities for effective landscaping. In particular, reference is made to the suburban qualities of the indicative layout and the size of the individual properties and plots by comparison with the existing spatial pattern and character of Eardiston. The Council also refer to the effects on the landscape.
15. Dealing with the landscape effects first, Policy SWDP 25 as far as it is relevant to this appeal, seeks to ensure that development proposals are appropriate to the character of the landscape setting and take account of such character in terms of their associated landscaping. However, the Council has not presented professional landscape evidence in support of its case.
16. The appeal site is not within any designated landscape or conservation area. The landscape at this location is clearly derived by the presence of a cluster of

relatively substantial buildings set within a dip in the landscape. There is a strong relationship with the neighbouring development rather than the wider agricultural landscape beyond to the south. From observations made at my site visit, the setting of the village will undergo a slight change as a result of development of the site, although the presence of frontage buildings in the form shown on the indicative layout would contribute to the existing character of the village centre. From what I saw elsewhere in Eardiston, the resulting change in character would not be uncharacteristic within its setting. Overall there would be a localised landscape impact associated with the development but not to such an extent as stated in the Council's evidence.

17. Turning to design, in definitional terms, and having regard to the content of policy SWDP 21, for a proposal to be cramped and at odds with the prevailing spatial pattern of development, there must be a consistent and well regarded existing character that is worthy of retention and echoing in newer development. The policy and its supporting text seem to me to be very deliberate in their language, specifically that the siting and layout should reflect the essential characteristics of the site and complement the character and setting of surrounding buildings and the distinctive qualities found in the area.
18. On that the basis, the Council has failed to define the overriding and prevailing character that it wishes to retain. From what I saw there is a large mix of development forms including detached dwellings set close to the main road often at right angles to the road and others set back within large plots. There are also smaller terraced dwellings located typically on the roadside edge. Subject to the details which would be controlled at reserved matters stage and the imposition of suitable planning conditions, I consider that the proposed development could be designed to respect the pattern, form and appearance of the village and its general densities and thereby reflect its scale and character.
19. I therefore conclude that the proposed development would comply with policies SWDP 25 in terms of its effect upon the landscape and policy SWDP 21 in terms of design.

Ecology

20. The ecology report, essentially a Phase 1 Habitat Assessment, that accompanied the application has identified that the main building has high potential for roosting bats and that a licence from natural England will be necessary to enable the development to proceed. Furthermore other buildings within the site have moderate potential for bats. The report makes recommendations for additional survey work and for biodiversity mitigation and enhancement. However, no mitigation has been offered by the appellants at this stage. I therefore consider that there would be a strong possibility that a roost and bat habitat may be lost or damaged.
21. The Natural Environment and Rural Communities Act 2006 requires that "Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity." Damage or destruction of a breeding site would be an offence under the Conservation of Habitats and Species Regulations 2010 (the 'Regulations') unless a Natural England (NE) European Protected Species (EPS) licence is issued prior to commencement of works or confirmation is received from NE that the development would not require such a licence.

22. The Habitats Directive requires that member states establish a system of strict protection for EPS, setting out the offences that may be committed. Derogations from this strict protection are only allowed in certain limited circumstances. When determining whether or not to grant a licence, Natural England must be satisfied that the following three tests have been met:
- (a) Preserving public health or public safety or other imperative reasons of overriding public interest;
 - (b) There is no satisfactory alternative; and
 - (c) The action will not be detrimental to maintaining the population of the species concerned at a favourable conservation status in its natural range.
23. In the absence of an application for an EPS Licence, I am required by Regulation 9(3) of the Regulations to have regard to the requirements of the Habitats Directive in the determination of this appeal. In effect I am required to consider whether there would be a reasonable prospect of a licence being granted by applying the three tests.
24. In so far as the first test is concerned, the public interest generated by the proposal can be of a social, environmental or economic interest. Although I have found in favour of the proposal on certain environmental and social grounds, having regard to development plan policies, the proposal would be contrary to SWDP policies designed to promote rural regeneration in this part of the District, whilst the limited nature conservation information that is available means that such issues remain unresolved. As such, there are outstanding environmental and economic concerns and the proposed development would not be in the public interest and therefore would fail the first test.
25. In relation to the second test, given that the appellants have not marketed the site for employment-generating uses, including the alternative of retaining the buildings for employment purposes, I cannot be satisfied that alternative solutions that would result in the protection of the existing bat habitat could not be achieved. The proposed development would thus fail the second test.
26. With regards to the third test, the appellants have undertaken a Phase 1 Habitats Survey and the ecology report includes a series of recommendations for further action and mitigation. Such a strategy might include provisions such as the appropriate timing of works to avoid disturbance, supervision by a licenced bat worker, provision of replacement roosting facilities and other undertakings designed to avoid damage to and protection of existing habitats. Accordingly, I would concur with the Council in relation to the third test that the proposed development could be implemented in such a way as to ensure no harm would occur to the protected species.
27. I have taken into account the comments made by Natural England during the application process. The appeal proposal fails to meet the derogation tests and I conclude that the proposal would have an adverse effect on ecology and that it would conflict with policy SWDP 22, which sets out amongst other things, to ensure that developments do not compromise the favourable conservation status of European or nationally protected species or habitats. This policy is consistent with paragraphs 109 and 118 of the Framework and carries significant weight.

Whether affordable housing and other infrastructure contributions are necessary

28. There is an absence of a section 106 Obligation in relation to the provision of affordable housing and contributions towards infrastructure despite the appellants' intentions with regards to providing five affordable units at the site. This is in with paragraph 50 of the Framework and Government's intentions to deliver a wide choice of housing and meet affordable housing need.
29. The Council believes that the requirement for infrastructure contributions is required given that the Policies SWDP15, SWDP 37, SWDP 38, SWDP 39 and SWDP 62 of the SWDP have only very recently been adopted. In addition, contributions are also sought from the Local Highway Authority towards infrastructure requirements emanating from the SWDP.
30. However, as I am dismissing this appeal on the substantive grounds set out in the Council's decision notice, I do not need to consider this issue further and the absence of a signed Agreement does not weigh heavily in my determination, particularly given that there appears to be a willingness on the part of the appellants to enter into an agreement and this could have been considered had I been supportive of the proposals overall. However, given my findings on other main issues, there would not be any reason to pursue this matter further at this time.

Other matters

31. The Council has raised the lack of information relating to surface water run-off calculations that would enable appropriate sustainable surface water drainage solutions to be provided. However, the site is at a low risk of flooding and is a brownfield site containing substantial areas of building and hardstanding where it is likely that betterment can be achieved in terms of surface water run-off. Moreover and subject to agreement, the Lead Local Flood Authority indicates that a specified reduction from its preferred greenfield run-off rates may be tolerated. I therefore consider that the matter could be satisfactorily dealt with by way of appropriate planning conditions requiring submission and prior approval of a surface water drainage strategy, which would comply with policies SWDP 28 and SWDP 29. These policies seek to ensure that developments do not pose unacceptable risks from or create unacceptable flooding and demonstrate through appropriate water management assessments that sustainable drainage solutions are possible.

Conclusion

32. Whilst I am satisfied that support could be given to the matters concerning suitability of location and effects on the landscape and design, there remains significant unresolved concerns in relation to the loss of employment land and effects on ecology. Moreover, the matters of affordable housing and infrastructure contributions while capable of resolution also remain unresolved.
33. For the above reasons and having regard to all other matters raised I conclude that this appeal should be dismissed.

Gareth W Thomas

INSPECTOR