The Planning Inspectorate

Appeal Decision

Site visit made on 16 August 2017

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

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

Decision date: 13 September 2017

Appeal Ref: APP/J1860/W/17/3172760
Land adj. to Sawrey, Stockton Road, Abberley Common, Worcestershire WR6 6AR

- 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 W E Flello against the decision of Malvern Hills District Council.
- The application Ref 16/00970/FUL, dated 29 June 2016, was refused by notice dated 21 December 2016.
- The development proposed is erection of 1 new detached 4 bedroom house and garage.

Decision

1. The appeal is allowed and planning permission is granted for erection of 1 new detached 4 bedroom house and garage at Land adj. to Sawrey, Stockton Road, Abberley Common, Worcestershire WR6 6AR in accordance with the terms of the application, Ref 16/00970/FUL, dated 29 June 2016, 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 use of the vehicular access on highway safety.

Reasons

Suitability of location

3. The appeal site is a plot of land located next to 'Sawrey', a large detached house to the east. 'Catchgates', a residential dwelling, lies to the west although its generous grounds separate that house from the site. Two other properties lie beyond. The appeal site has been used as a 'kitchen garden', associated with Manchester House opposite, and it has a number of wooden outbuildings, including a workshop, a garage and a shed, along with an old brick built pigsty. There is an existing vehicular access off the A443 Stockton Road.

4. Policies SWDP 1 and SWDP 2 of the South Worcestershire Development Plan (SWDP)[1] set out the Council's overarching sustainable development principles

[1] Adopted February 2016

and its development strategy and settlement hierarchy. Policy SWDP 2 aims to focus most new housing on Worcester and other urban areas and to strictly control development in the open countryside, defined as land beyond any development boundary.

5. Although the appeal site is outside the development boundary for Abberley Common, it is adjacent to it and opposite the village shop and post office and other housing. A primary school and village hall are within walking distance along 'The Common'. There is a pavement on the opposite side of the road which continues into The Common, where there is further residential development. There is also a bus stop opposite the site, which the appellant advises is on the main Tenbury to Worcester bus route.

6. The village itself, Abberley Common, is defined as a Category 1 village in the SWDP which indicates, according to the Council, that it has at least four key services and access to daytime public transport. Policy SWDP 2 says that such villages are suited to accommodate market and affordable housing. Abberley Village with its public house and church lies slightly further away to the north-east with the Elms Hotel, Spa and Restaurant to the west and the village of Great Witley with further facilities and services lies to the south east. Larger settlements such as Stourport (7 miles), Kidderminster and Tenbury (10 miles) and Worcester and Droitwich Spa (12 miles) with their facilities and employment opportunities are within reach.

7. As the appeal site is situated within a small cluster of houses and opposite other housing on the outskirts of a village and proximate to services and public transport, I do not consider it to be in a remote or isolated location. Paragraph 55 of the National Planning Policy Framework (the Framework)[2] acknowledges that housing should be located where it will enhance or maintain the vitality of rural communities. For example, where there are groups of small settlements, development in one village may support services in a village nearby. Whilst it cautions against the creation of new isolated homes in the countryside, it is clear from the context described above that the site does not fall into that category.

8. Moreover the appellant states that land at Abberley Common, some 80 metres east of the appeal site, has been allocated for 14 houses in the SWDP, which has not been disputed by the Council. On that basis and in view of the proximity of services and public transport, as the Council appears to accept, it cannot be argued that the location is unsuitable or unsustainable. That is also in accord with an appeal decision[3], issued on 9 May 2016, relating to land to the west of Apostles Oak Cottage (to the north east of the appeal site), which allowed development of some 25 dwellings on a site outside the development boundary for Abberley Common. Although for a greater number of houses, I find the basic line of reasoning in that appeal decision both relevant and persuasive.

9. Whilst the Council has a 5-year housing land supply, the Framework does not suggest that this should be treated as a cap or an upper limit, as confirmed in a number of appeal decisions, including the one referred to above, and others

[2] Published March 2012
[3] APP/J1860/W/16/3144810

cited by the appellant.[4] Government policy, as expressed in paragraph 47 of the Framework, is to significantly boost the supply of housing.

10. The Council refers to the high quality of the open countryside in Abberley Common, which is not disputed. However, there is no clear assessment of how the proposed development would compromise the intrinsic natural beauty of the countryside. It would be located on a plot amongst and opposite existing buildings on a bend in the A443 on the edge of the settlement. It has been used as a kitchen garden in connection with another house for a considerable time and has some existing buildings on it. It is a well-defined modest plot which is partially screened by vegetation from the road. It does not provide any significant open views which would be adversely affected by the building of one house. It is already in semi-domestic use and the proposed development would not appear discordant or represent an incursion into the surrounding open fields to the rear. Therefore, it would not have a detrimental effect on the wider surrounding open countryside. In my view, the appeal site has more affinity with the village than the surrounding open countryside and is proximate to various services and facilities.

11. In terms of the three dimensions of sustainable development, articulated in paragraph 7 the Framework, the proposal would provide economic benefits via employment generated during the construction period and in the spending of future occupants. Socially, there would be contribution to the supply of housing and the occupants would contribute to the viability of local services. It is noted that environmentally the proposed house would seek to be energy and water efficient. With appropriate landscaping, which could be secured by condition, it would not have an adverse effect on the quality and appearance of the open countryside. The availability of public transport would also offer a possible alternative to the private motor car. Therefore, the environmental effect would be relatively neutral. Although the benefits would be limited as the proposal is for only one house, such contributions still have a value to be weighed in the balance. Equally, negative effects in terms of level of car use would also be relatively limited by the scale of the development.

12. It is accepted that the proposal would breach policy SWDP 2 because it is outside the development boundary and that it does not meet any of the exceptions referred to in SWDP 2C. However, it would not compromise the principle of safeguarding the open countryside. Neither would it conflict with the overarching sustainability principles articulated in policy SWDP 1, which reflect those in the Framework. Nor would it conflict with paragraphs 17, 58, 109 or 196 of the Framework including the desire to protect the character and beauty of the countryside and the natural environment. Therefore, I conclude that the proposal would be in a suitable location and accord with the objectives of the SWDP as whole. Given that I have not identified tangible harm with respect to location, beyond the transgression of a development boundary, I consider that the proposal would amount to sustainable development.

Highway safety

13. The Councils Officer's Report suggests that the introduction of a new dwelling with access onto the A443 at this bend in the road would have a significant impact on the surrounding area. It is submitted that vehicles accessing and egressing the appeal site would meet fast moving traffic on this bend in the

[4] APP/D0840/A/13/2209757, APP/A0665/A14/2226994 and APP/Y2810/A/14/2228921

road. I also note the similar serious concerns expressed by Abberley Parish Council and some local residents about highway safety at the location.

14. Although accidents have occurred on the bend in the past and 'near' accidents have been referred to, I have not been provided with recent accident data or records by the Council to support those concerns. Whilst one local resident has provided newspaper clippings referring to accidents on the bend, they date from the 1980s, and although that local resident strongly objects to the proposal on highway safety grounds, their submission states that the stretch of road has been accident-free for 9 years.

15. In the circumstances, it is reasonable to give significant weight to the expert advice of the highway authority, Worcestershire County Council (WCC). I also note that a speed survey, which appears to have been conducted by WCC, has been taken into account in its deliberations. The highway authority has not objected to the proposal subject to appropriate conditions, including specified visibility splays.

16. The relevant stretch of the A443 is subject to a 30mph speed limit for some distance and, as I saw on my site visit, there is considerable appropriate road signage, both in and to the side of the road, supplemented by vehicle activated illuminated signs on both approaches advising drivers of the bend and need to reduce their speed accordingly. The property at Sawrey, next door to the appeal site, had cars parked in its driveway and it has a similar access onto the same stretch of road, a short distance from the proposed access to the appeal site. I do not consider that the level of additional traffic generated by one dwelling is likely to have a significant effect on highway safety.

17. The Council also refer to the lack of a footpath on the southern side of the road. However, many rural villages lack footpaths on some stretches of road, and in this case there is a wide verge which can be used as an alternative. The access to the property would also be set back from the road. There is a footpath on the other side of the road which links to those on adjoining roads. There are also other properties in proximity to the bend. Therefore, I do not think that pedestrian safety would be significantly compromised. Although I appreciate that it only provides a snapshot of conditions, I was able to cross the road safely on a number of occasions on a weekday afternoon exercising reasonable caution appropriate to the road layout.

18. Therefore, whilst I have carefully considered the safety concerns of the District Council, Parish Council and some local residents, I am ultimately swayed by the professional advice of the highway authority. It considers that a safe access can be achieved with appropriate measures, including visibility splays, secured by condition. Consequently, I do not find that the use of the access would have an adverse effect on highway safety. It follows the proposal would not be contrary to policies SWDP 4 or indeed SWDP 21 (although that policy is not referenced in the Council's decision notice) of the SWDP, which, amongst other things, require that proposals must demonstrate regard for road safety and that vehicle traffic from developments should be able to access the highway safely.

Other Matters

19. In addition to the main issues discussed above, surface water drainage and flooding have been referred to by the Parish Council and a local resident.

However, I note that both the District Council and its Land Drainage team have not objected to the proposal, subject to a suitable condition requiring the submission of an appropriate scheme for approval. Therefore, I see no reason why such concerns could not be dealt with by condition.

20. Reference has also been made to a potentially historic piggery on the site. Whilst I note that the Council refers to an old brick built pigsty, no independent evidence has been presented to suggest that it has particular historic merit and the Council has not raised any concerns on that matter. Therefore, its existence does not lead me to alter my decision.

Conditions

21. 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.

22. A condition relating to external facing materials is necessary to safeguard the character and appearance of the area. A condition relating to drainage is necessary to ensure that there are satisfactory arrangements for the disposal of surface water without adding to any flood risk. Conditions relating to visibility splays, alterations to the existing road sign and a Construction Management Plan are necessary in the interests of highway safety. A condition relating to landscaping is appropriate to preserve and enhance the character and appearance of the area. It is essential that the requirements of these conditions are agreed prior to development commencing to ensure that the development is acceptable in the respects detailed.

23. Conditions relating to access gates/doors, the access, turning and parking areas are also necessary in the interests of highway safety. A condition regarding boundary treatments is appropriate to safeguard the visual appearance of the site. A condition restricting the hours of construction is necessary to protect the living conditions of nearby occupiers. A condition relating to sustainability measures, including waste, recycling and water management, is appropriate in the interests of sustainable development.

24. It is necessary to impose a condition requiring the works to be carried out in accordance with recommendations in the Preliminary Ecological Assessment to protect the potential habitat of bats and nesting birds.

25. Conditions suggested by the Council relating to superfast broadband and micro-energy generation have not been imposed because they are not necessary to enable the development to proceed. Moreover, without a copy of the relevant SWDP policies, I cannot justify including them.

Conclusion

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

Jonathan Tudor

INSPECTOR

SCHEDULE OF CONDTIONS

1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan, Drawing Nos 1, 2, 3, 4 and 9 unless otherwise required by conditions attached to this permission.

3) 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.

4) 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 greenfield 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. Where a sustainable drainage scheme is to be provided, the submitted details shall:

   i. 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;

   ii. include a timetable for its implementation;

   iii. 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

5) 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 2.4 metres back from the near side edge of the adjoining carriageway (measured perpendicularly) for a distance of 58 metres to the south east along the nearside edge of the adjoining carriageway, and 2.4 metres back from the near side edge of the adjoining carriageway, (measured perpendicularly), for a distance of 55.6 metres to the north west to a point measured 0.6m from 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.

6) Any new access gates/doors shall be set back 5 metres from the adjoining carriageway edge, and shall be made to open inwards only.

7) The development hereby permitted shall not be brought into use until the access, turning area and parking facilities shown on the approved plan have

been provided. These areas shall thereafter be retained and kept available for those users at all times. For its first 5m measured back from the carriageway edge the access shall be constructed in a bound material.

8) Prior to the commencement of the development hereby permitted, the existing road sign shall be raised such that its mounting height is no less than 1.5m above the ground. Details are to be submitted and approved in writing by the local planning authority.

9) 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 equipment

   shall have been submitted to, and approved in writing by, the local planning authority. The approved plan shall be implemented throughout the construction period.

10) Prior to installation on site details of the boundary treatment to be erected shall be submitted to and approved in writing by the local planning authority. These details shall include a plan (at a minimum scale of 1:500) detailing the position of all proposed boundary treatment and annotated or accompanied by a schedule specifying the type, height, composition and appearance of boundary treatment throughout the site. The approved boundary treatment shall be erected before the development is first brought into use and thereafter retained in that form, notwithstanding the provisions of Schedule 2, Part 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any Order revoking and re-enacting that Order with or without modification).

11) Prior to the commencement of development a scheme of landscaping shall be submitted to and approved in writing by the local planning authority. The landscaping scheme shall include a plan detailing the disposition of planting, cross referenced to a schedule listing the species, size and number of plants proposed. The approved scheme shall be carried out concurrently with the development and completed prior to the first occupation of the development.

    If within a period of five years from the date of the planting of any tree planted pursuant to this condition that tree, or any tree planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the local planning authority, seriously damaged or defective, another tree of the same species and size as that originally planted shall be planted at the same place, unless the local planning authority gives its written approval to any variation.

12) Ground or construction works shall not take place outside 0730 hours to 1900 hours Mondays to Fridays and 0730 hours to 1300 hours on Saturdays, nor at any time on Sundays or Bank Holidays.

13) Prior to the commencement of development details of sustainability measures (including waste, recycling and water management) to be incorporated into the design of the dwelling hereby approved shall be submitted to and approved in writing by the local planning authority. The approved measures shall be implemented in full and retained thereafter.

14) The works shall be carried out in strict accordance with the recommendations set out in the Preliminary Ecological Appraisal carried out by Focus Ecology Ltd dated November 2014 and submitted with this application.

END OF SCHEDULE