The Planning Inspectorate

Appeal Decision

Hearing held on 26 July 2017

Site visit made on 26 July 2017

by JP Roberts **BSc(Hons) LLB(Hons) MRTPI**

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

Decision date:13th November 2017

Appeal Ref: APP/J1860/W/16/3164820
Land off Stourport Road, Great Witley, Worcestershire

- 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 Clive Jessup against the decision of Malvern Hills District Council.
- The application Ref 15/01173/OUT, dated 12 August 2015, was refused by notice dated 23 September 2016.
- The development proposed is residential development of 12 affordable dwellings and associated works.

Decision

1. The appeal is allowed and outline planning permission is granted for residential development of 12 affordable dwellings and associated works on land off Stourport Road, Great Witley, Worcestershire in accordance with the terms of the application, Ref 15/01173/OUT, dated 12 August 2015, subject to the conditions attached in the Annex to this decision.

Procedural matters

2. The application is in outline with all matters other than access reserved for subsequent approval.

3. At the Hearing it was confirmed that the correct name of the appellants is Jessup Brothers Ltd.

4. The application was amended during its consideration by the Council, and I shall take the amended plans into account in my decision. An amended illustrative layout was also submitted at the hearing, to which I have also had regard.

5. A planning obligation under Section 106 of the Town and Country Planning Act 1990 was submitted at the Hearing. An amended version was submitted after the close of the Hearing which deals with the provision of affordable housing and a contribution towards improving public open space. I shall refer to this in more detail below.

Main Issues

6. The main issues are:

   i) whether the proposal meets a proven local need for affordable housing which cannot be met in any other way;

ii) the effect of the proposal on the setting of Hundred House Hotel, a grade II listed building, and

iii) whether the site would be adequately drained.

Reasons

The need for affordable housing

7. The site lies outside of the development boundary for Great Witley as denoted in the South Worcestershire Development Plan (SWDP), adopted in 2016. Policy SWDP 2C deals with development in the open countryside which it defines as "land beyond any development boundary" and says that such development will be strictly controlled and will be limited to specified categories, which includes rural exception sites.

8. Policy SWDP 16 deals with rural exception sites, allowing affordable housing on small sites beyond, but reasonably adjacent to, the development boundaries of specified villages, which include Great Witley, where a number of criteria are met. The first of these is that there is a proven and as yet unmet local need, having regard to the latest Worcestershire Strategic Housing Market Assessment (SHMA), the Sub-regional Choice-based Letting Scheme and other local data e.g. Neighbourhood Plan, Parish Survey or Parish Plan.

9. In this case, the SHMA shows that there is considerable demand for affordable housing in the district. The Council submitted at the Hearing an update from the Choice-based Letting Scheme register which it accepted showed evidence of local need, and satisfied the need criterion of the policy. The appellants also undertook a parish needs survey, which showed some limited evidence of need. However, that survey was undertaken without the participation of the Parish Council, and thus the ability to obtain local information about families or individuals who lived outside of the parish, but had a need to live in Great Witley, was constrained. The survey did not encompass adjoining parishes.

10. Ten affordable dwellings have been provided since 2015 on a site in Glendower Way in the village. Evidence shows that not all of them have been allocated to local people (as defined in the policy). Even so, the majority of the social rent dwellings have been taken up by local people, and the fact that not all of them were taken up by local people at that time does not mean that there is no future demand. It is also relevant that none of the Glendower Way dwellings were one bedroom units, for which the evidence indicates that demand is greatest.

11. In addition, a further 26 affordable dwellings are proposed within the local area, but these are mainly subject to resolutions to approve, with two of the larger sites being offered for sale. Accordingly, there can be no certainty that they will be delivered either within the near future, or at all.

12. The obligation offers a revised mix of housing, to meet the Council's preferred provision of smaller units which more closely allies with the evidence of demand. Taking all these matters into account, I consider that there is a proven and as yet unmet local need. The Council accepted that the need criterion of the policy was met, and on the basis of the evidence I agree.

13. The policy also requires that no other suitable and available sites exist within the development boundary of the settlement. The appellants had not

undertaken a robust analysis of potential sites, but given that the development boundary of Great Witley is tightly drawn, it is clear, as accepted by the Council, that no other sites of sufficient size to accommodate 12 houses exist within the development boundary of the village. Whilst planning permission has been granted for other sites in the locality, but outside of the settlement boundary, which include affordable housing as part of an open market scheme, two of those sites are for sale, with no indication that they are likely to come forward.

14. A further policy criterion requires that arrangements be made to ensure that the dwellings remain affordable to meet the needs of local people. The planning obligation offered by the appellants includes provisions to ensure that the dwellings remain affordable and that the properties are allocated to people in accordance with a sequential cascade, with priority going to local people.

15. I therefore conclude on this issue that there is a proven local need for affordable housing which cannot be met in any other way, thereby justifying an exception to policies which would normally preclude development in this location. The proposal would accord with Policy SWDP 16 and would not conflict with Policy SWDP 2C.

Setting of Hundred House Hotel

16. The hotel is an imposing three storey building, located close to the road frontage in a prominent position near to the junction of Stourport Road with Witley Road. There is a substantial gap between the hotel and the boundary with the appeal site, which forms an access to the rear and car parking. Planning permission has recently been granted for development on the hotel site which includes new housing to the rear, the conversion of part of the building into apartments and the creation of a micro-brewery. Work in carrying out the development has commenced.

17. The appeal site lies in the field next to the hotel, and forms part of its setting. There is a line of very tall leylandii trees which abuts the western boundary of the appeal site, planted on the hotel side of the boundary, outside of the control of the appellants. These trees would prevent the proposed dwellings and the hotel being seen in the same viewpoint, and would help to ensure that the houses would not harm the setting to the listed building. The appellants accept that the loss of the trees would harm the setting of the listed building.

18. It is intended that these off-site trees should remain, and the submitted evidence shows that the dwellings could be sited outside the root protection area of the trees, and that elsewhere the root systems could be protected with the use of "no-dig" techniques. The Council argues that in practice it would be difficult to avoid damage to the root systems of trees closest to the roads. However, the area close to the roots of the leylandii would be a field access to the pasture to the north of the site, and would not need an intensively engineered solution, and thus I am satisfied that a no-dig solution would be feasible and appropriate.

19. One of the proposed dwellings is shown on the indicative layout as being located fairly close to the western tree-lined boundary. At the Hearing, an amended indicative site plan was submitted which showed an alternative layout, arising from the Council's stated need for smaller dwellings. The smaller dwellings and lower density would provide greater scope for siting

dwellings further from the boundary and to provide planting as a safeguard against the possible loss or failure of the leylandii. I consider that this would adequately protect the setting of the listed building.

20. One of the dwellings on the indicative plan is shown as being located close to the boundary; however this may not be the case, as the reduced density may allow for an alternative layout. Even if it were to be sited in such a position, whilst I accept that the height and density of foliage would create an oppressive outlook if windows were to face the trees, it would also be possible to site a dwelling so as to have habitable rooms facing in other directions. Whilst morning sunshine would be limited, I am satisfied that it would not harm occupiers' living conditions to a material extent that would place pressure to have the leylandii lopped or removed.

21. Although not a reason for refusal, the Council criticised the proposed layout of the development. There is a strongly linear pattern to the residential development that lies to the west of the hotel, which would not replicated by this proposal. That pattern is abruptly curtailed by the more bulky and higher hotel and the development to its rear. This, together with the significant gap which exists between the hotel and the site boundary, justifies not continuing that linear form.

22. Moreover, layout is not a matter to be determined at this stage, and, as mentioned above, the appellants' proposal to provide a number of smaller dwellings gives scope to arrive at an appropriate layout, even taking into account the policy requirement to provide 20% green space. In this regard I noted that the both the Council and the appellants felt that a courtyard development could be acceptable, and even though the access is fixed, I consider that a layout could be devised which would adequately protect the setting of the heritage asset.

23. I therefore conclude that the proposal would not harm the setting of Hundred House Hotel, or conflict with Policy SWDP 6 which deals with the historic environment.

Drainage

24. Policy SWDP 29 requires all development proposals to demonstrate that site drainage and runoff will be managed in a sustainable and co-ordinated way that mimics the natural drainage network, and to manage surface water through Sustainable Drainage Systems (SuDS), and as a minimum, demonstrate that for a greenfield site, the post-development surface water run-off rate will not increase. The policy does not distinguish between outline and full applications.

25. No details of surface water drainage have been submitted with this proposal, and therefore the requirements of the policy are not met. However, this is a site with no history of drainage problems and there would be ample space within the site to accommodate a range of measures to ensure that surface water run-off would not exceed greenfield rates.

26. The last sentence of Policy SWDP 29 says that "given the wide range of SuDS techniques available, there is a sustainable drainage solution to suit all sites". In this case, where 20% of green infrastructure would be provided on site, and where there is scope to provide on-site attenuation, I consider that the failure

to provide a detailed strategy "up front" would not be likely to result in flood risk or unsustainable drainage arrangements, and can be a matter left to be dealt with by the imposition of conditions.

27. I therefore conclude on this issue that, subject to conditions, the site could be satisfactorily drained, and that although the proposal does not comply with the specific requirements of the Policy SWDP 29, its underlying objectives would not be prejudiced.

Obligation and conditions

28. The Council has raised a number of concerns about the precise terms used in the obligation, and has recommended changes which the appellants have not adopted. I recognise that the amendments sought by the Council would be consistent with its policy on the allocation of affordable dwellings, seeking to ensure that the dwellings are occupied in accordance with a sequential arrangement giving priority to those with the most local connections. The obligation contains a number of provisions which do not accord wholly with the Council's objectives, and includes terms that pose some small risk that the dwellings could be disposed of by a chargee free of the affordable housing strictures of the obligation.

29. However, when looked at in the round, I consider that the obligation is consistent with the National Planning Policy Framework and, notwithstanding that some of the wording is not entirely apt, it is enforceable. Having regard to the importance of the disputed chargee term to the appellants in terms of being able raise finance to fund the development, I consider that on balance, the benefits of the obligation outweigh the shortcomings and risks. The obligation complies with the Community Infrastructure Levy Regulations 2010, and I have taken it into account as a material consideration which weighs heavily in favour of the proposal.

30. The Council has suggested a number of conditions which I have assessed in the light of national guidance. In addition to the standard outline conditions, a condition to require the access to be carried out in accordance with the approved plans is needed to ensure certainty.

31. Conditions relating to materials, tree protection measures and boundary are needed in the interests of appearance. Conditions relating to the disposal of foul and surface water are required to ensure that the site is drained in a sustainable manner. Conditions relating to access and parking are required for reasons of highway safety. Cycle parking is needed to encourage travel other than by car. A construction management plan is needed in the interests of highway safety and to protect the living conditions of nearby residential occupiers. For the latter reason, a restriction of the hours that construction works may be carried out is necessary.

32. Conditions relating energy efficiency, waste, water and emissions are needed to promote sustainability, and to meet the requirements of relevant policies in the SWDP, which the Council says were considered to be justified by the Examining Inspector in the light of the Written Ministerial Statement of 12 September 2014.

33. Conditions relating to broadband provision and electric vehicle charging infrastructure are needed respectively to enhance the provision of local

community facilities and serves, and to promote the use of sustainable transport modes.

Conclusions

34. For the reasons given above, I conclude that the appeal should be allowed.

JP Roberts

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Sian Griffiths	RCA Regeneration Ltd
Gareth Sibley	RCA Regeneration Ltd
Steve Faizey	SP Faizey Architect
Reuben Flynn	Waterloo Housing
Clive Jessup	Jessup Brothers Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Simon Rowle	Malvern Hills District Council
Rose Murray	Malvern Hills District Council
Emma Jordan	Malvern Hills District Council

DOCUMENTS SUBMITTED AT THE HEARING

1 Affordable housing evidence for Great Witley submitted by the Council
2 Affordability evidence submitted by the appellants
3 Indicative layout plan Ref: 14049/2H submitted by the appellants
4 Extract from Inspector's Report submitted by the appellants

DOCUMENTS SUBMITTED AFTER THE HEARING

1 Draft planning obligation
2 Planning obligation dated 1 August 2017
3 Council comments contained in an email dated 4 August 2017
4 Appellants' comments dated 10 August 2017

ANNEX

CONDITIONS

1) Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.

2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.

3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.

4) Other than as required by the details to be approved under condition 10, the access hereby permitted shall be carried out in accordance with the approved plans Refs: 14049/1 and 14049/4A.

5) 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.

6) 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).

7) 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, and the means of run-off treatment where necessary. 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 run-off 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.

The approved maintenance and management plan shall be

8) The development hereby permitted should not commence until drainage plans for the disposal of foul water flows have been submitted to and approved by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details before the development is first brought into use.

9) Temporary fencing for the protection of all retained trees/hedges on site and trees outside the site whose Root Protection Areas fall within the site shall be erected in accordance with BS 5837:2012 (Trees in Relation to Design, Demolition and Construction) before development of any type commences, including site clearance, demolition, materials delivery, vehicular movement and erection of site huts. Any alternative fencing type or position not strictly in accordance with BS 5837 (2012) must be agreed in writing by the local planning authority prior to the commencement of development. This protective fencing shall remain in place until the completion of development or unless otherwise agreed in writing with the local planning authority. Nothing should be stored or placed (including soil), nor shall any ground levels altered, within the fenced area without the previous written consent of the local planning authority. There shall be no burning of any material within 10 metres of the extent of the canopy of any retained tree/hedge.

10) Notwithstanding condition 4, 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.

11) 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 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.

12) Prior to the occupation of the development hereby approved the driveways and/or vehicular turning areas shall be consolidated, surfaced and drained in accordance with details to be submitted to and approved in writing by the local planning authority at a gradient not steeper than 1 in 8.

13) Prior to the commencement of development, details of the location, surfacing and drainage of car parking and turning facilities , together with

a timetable for their implementation, shall be submitted to and approved in writing by the local planning authority. The parking and turning spaces shall be provided in accordance with the approved details. Thereafter the parking spaces shall not be used for any purpose other than the parking of vehicles.

14) Prior to the first occupation of any dwelling hereby approved secure parking for 2 cycles for each 1 bedroom dwelling and 4 cycles for each 2/3 bedroom dwelling shall be provided within the curtilage of each dwelling and these facilities shall thereafter be retained for the parking of cycles only.

15) No part of the development hereby approved shall begin until a Construction Management Plan to include details of:

i) parking for site operatives and visitors
ii) area for site operatives' facilities
iii) parking and turning for delivery vehicles
iv) areas for the storage of plant and materials
v) 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.

16) Ground or construction works shall not take place outside 07:30 hours to 19:00 hours Mondays to Fridays and 07:30 hours to 13:00 hours on Saturdays, nor at any time on Sundays or Bank Holidays.

17) Prior to the first occupation of any of the dwellings hereby approved, details of superfast broadband facilities or alternative solutions to serve the dwellings hereby approved shall be submitted to and approved in writing by the local planning authority. The submitted details shall include an implementation programme. The facilities shall be provided in accordance with the approved details.

18) Prior to the commencement of development a scheme to demonstrate on site micro–generation to meet at least 10% of the households' predicted energy requirements from renewable or low carbon sources equivalent shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and retained hereafter.

19) Prior to the commencement of development details of sustainability measures (including waste, recycling and water management) to be incorporated into the design of the dwellings 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.

20) Appropriate cabling and an outside electrical socket shall be supplied for each dwelling to enable ease of installation of an electric vehicle charging point. The charging point shall comply with BS7671 and the socket shall comply with BS1363 and be provided with a locking weatherproof cover if located externally to the building.

21) Details shall be submitted to and approved by the local planning authority prior to the first occupation of the development for the installation of Ultra-Low NOx boilers with maximum NOx Emissions less than 40

mg/kWh. The details as approved shall be implemented prior to the first occupation of the development and shall thereafter be permanently retained.