
Appeal Decision

Hearing Held on 23 January 2018

Site visit made on 23 January 2018

by S J Papworth DipArch(Glos) RIBA

an Inspector appointed by the Secretary of State

Decision date: 26 January 2018

Appeal Ref: APP/J1860/W/17/3179621

Land at Spindleberry Tor, High Tor Lane, Alfrick, Worcestershire WR6 5HB

- 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 Lionel Higginson against the decision of Malvern Hills District Council.
 - The application Ref 1601594/FUL, dated 24 October 2016, was refused by notice dated 12 January 2017.
 - The development proposed is provision of new contemporary, sustainable, carbon-neutral family dwelling on the site of historic holiday cottage.
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Decision

1. I dismiss the appeal.

Main Issues

2. The site is outside any settlement boundary and the development is promoted specifically to meet the provisions of the National Planning Policy Framework with regard to a new isolated home in the countryside. The first main issue is therefore;
 - The extent of compliance with the fourth bullet point of paragraph 55 of the Framework.
3. The Council cited a second reason for refusal regarding the amount of information submitted with regard to the Leigh Brook Site of Special Scientific Interest and the effect on bats and trees in particular. Whilst the Council were subsequently satisfied that mitigation secured by condition could address these matters, and did not pursue the reason for refusal at appeal, the Inspector becomes the Competent Authority under the Regulations and hence there is a second main issue as follows;
 - The effect of the proposal on European Protected Species, and mature trees within the Leigh Brook Site of Special Scientific Interest and Ancient Woodland.

Reasons

Paragraph 55 Considerations

4. As a preliminary matter, the case of Braintree DC v SSCLG, Greyread Ltd & Granville Developments Ltd [2017] EWHC 2743 (Admin) had been raised with the parties to this appeal prior to the Hearing, as if the site is not isolated, the

special circumstances listed in paragraph 55 of the Framework may not have been available to be argued. In the event, the agreement reached in the Statement of Common Ground appears correct, that although there are other dwellings accessible off the track leading to the site, the location of the proposed building itself, rather than the orchard, means that the definition of 'isolated' put forward in that court case holds true for the appeal proposal.

5. The South Worcestershire Development Plan Policy 2 sets out the development strategy and settlement hierarchy, which includes at iii to safeguard and wherever possible enhance the open countryside, and at vi to focus most development on the urban areas. Windfall development will be assessed in accordance with the hierarchy with the lowest being 'lower category villages' with development within the boundary. Part C sets out the limited development permissible in the open countryside, and part F requires development proposals to be of an appropriate scale and type with regard to the landscape character.
6. Design is the subject of Policy 21 with all development being expected to be of a high quality. It will need to integrate effectively with its surroundings, in terms of form and function, reinforce local distinctiveness and conserve, and where appropriate, enhance cultural and heritage assets and their settings. New and innovative designs will be encouraged and supported where they enhance the overall quality of the built environment. The policy goes on to list matters that would need to be addressed.
7. The core planning principles at paragraph 17 of the Framework include seeking high quality design and recognising the intrinsic character and beauty of the countryside. Paragraph 56 states that the Government attaches great importance to the design of the built environment; good design is a key aspect of sustainable development, is indivisible from good planning, and should contribute positively to making places better for people.
8. It is agreed that the proposal to build a dwelling in this location would be contrary to Policy 2 and that it does not accord with any of the exceptions in that policy. However, paragraph 55 of the Framework states that whilst new isolated homes in the countryside such as this proposal should be avoided, special circumstances that might allow development include the exceptional quality or innovative nature of the design of the dwelling. Such a design should be truly outstanding or innovative, helping to raise standards of design more generally in rural areas, reflect the highest standards in architecture, significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area.
9. The Council states the view that the provisions of paragraph 55 set a high standard and that this is evidenced by the very few dwellings that have been permitted nationally. That statement is agreed, as is that of another Inspector writing in 2014 on a paragraph 55 proposal, that '*...the innovative aspects would cease to be new following the grant of permission, allowing the appeal would not set a precedent that could easily or frequently be repeated*' (Ref: APP/N0410/A/14/2220241). By the nature of this allowable exception to the general policies of restraint, the standard sought will evolve over time.
10. Looking at the criterion in paragraph 55 to be truly outstanding or innovative, it is noted that this is an alternative, although the appellant pleads adherence to both strands. With regard to the aims of helping to raise standards of design

more generally in rural areas, the design has evolved from a more sheltered and less obvious building form on the site, as a result of a design review carried out by MADE. The rationale for this change of approach is acknowledged; the argument being that to be able to raise standards the building should be seen rather than be hidden away. The effect of this more assertive building will be considered later.

11. Part of the design that has been carried forward from previous iterations is that of the 'pound'. There are the remains of a stray animal pound at the junction in Alfrick Pound itself and that is where the area gets its name. The form of the proposed building as an enclosing sweep of two and single storey parts enclosing a central courtyard housing all the domestic activity, whilst letting the natural and enhanced landscape run up to the outer edge is stated to reflect the 'pound' arrangement. However, the distance between the site and the original pound, the out-of-centre location and completely altered form of this being a dwelling rather than a wall all militate against this being readily understood, and it appears a somewhat contrived justification for the form. In all, little weight attaches to the analogy of the 'pound'.
12. Nevertheless, there are clearly advantages to the form in restricting the amount of domestic activity or paraphernalia that might be seen outside the courtyard, although control of any migration of activity and items from the courtyard to the wider landscape may be difficult, either by condition or enforcement and as designed there would be a view into the courtyard from outside in any event.
13. With regard to innovation, the proposal appears to make use of many tried and tested systems, such as low temperature underfloor heating, passive solar gains through the atrium, electricity and hot water through roof-mounted panels, high thermal performance and a flywheel effect through heavy construction, as well as less conventional construction methods to avoid the need for damp-proof membranes in the control of water vapour. Comfort at internal temperatures as low as 16° were mentioned and it can be concluded that the dwelling would enjoy a well-tempered environment with low energy uses and hence low or zero carbon emissions.
14. That ethos has been carried through in the construction with low embedded energy and short 'material miles' through the use of local sources. The use of hempcrete may be an innovation on this type of building although the appellant states that its use in the repair of historic structures is more common. These and other energy saving measures all together in one installation may be unusual, but that amalgamation does not amount to innovation of the high standard sought in paragraph 55. There remains doubt as to the extent to which the building would be 'off-grid' for electricity as claimed in the appellant's personal statement.
15. One item of energy storage does merit greater investigation and was the subject of discussion at the Hearing. As explained, and set out in a document submitted to the Hearing, energy from the solar panels would be stored in a large, well-insulated underground water tank that provides hot water by way of a heat pump to domestic outlets and to the low temperature underfloor heating. As the heat pump extracts energy the water turns to ice, which can be stored over long periods so that it can be used to cool the house also. Since freezing is an exothermic process, as liquid water changes to solid ice the

latent heat of crystallisation energy is released. This latent heat is retained in the ice store system and releases additional usable heat.

16. This 'ice storage system' is not new and has been used in various installations in Germany, but only two were referred to as being in the United Kingdom. One was a 'test-bed' and the other appears to be in Scotland. To that extent another installation at the appeal site could help to raise standards of design more generally in this rural area, but apart from promulgation within professional groups as stated by the appellant, it is unclear as to how that would be achieved. To be innovative is not the same as being uncommon, but the ice-store system would still be one of only three, and the first in this region, so that weight does attach to this innovation, but whether this merits the term 'truly' as used in the criterion, is less clear-cut.
17. Turning to the architectural qualities of the building, the interesting plan form of the courtyard, albeit not having been fully justified, does not appear to have been resolved in three dimensions. The upper parts are in four somewhat disjointed sections; the two storey part with a pitched roof, the atrium, the skeletal-framed sun terrace and the open roof garden. The effect would be of a varied roof form, domestic activity in plain view on the terrace and an over-large flat roofed area of single storey form in the most prominent part of the site. Whilst this may well have followed the advice of MADE, the result is an over-assertive building that does not appear as an holistic design but as a series of individual forms that do not sit well together. The use of local and natural materials and the unifying element of the ground floor fail to draw together the disparate forms above.
18. Whilst not a matter for this appeal, some of the elegant forms of an earlier iteration shown on drawing 114 'vistas' for example, have not survived sufficiently with the attempt to make the building more visible. The design now presented fails to be truly outstanding in its architectural treatment of building forms, materials and spaces. Whilst the design would satisfy the general requirements of paragraph 56, subject to consideration of the setting and wider area, the building design does not reach the higher standard of being truly outstanding as sought in paragraph 55.
19. With regard to the next criterion on the immediate setting, the site is presently an open field, rising from the north-west and with a backdrop of woodland. It appears to have been used recreationally, associated with the house at Spindleberry Tor, although the ownership link no longer exists. The character and appearance is that of mown grass at the site of the house and immediate setting, with a more agricultural feel to the site of the proposed orchard.
20. There does appear to be doubt over the use and appearance of the land to the south-west, stated by the Council to be subject to ongoing enforcement investigations. Certainly at the time of the site inspection that land appeared degraded and unattractive. However, nothing in the appeal proposal would alter that state, the land being off-site, and the appeal site itself is an attractive green area openly visible to users of the track and the nature reserve, and in views from Stocks Road, between frontage dwellings.
21. The extent of visibility was tested at the site inspection and covers a significant part of the area where the tracks within the nature reserve converge with the access right of way, and users would be able to see and enjoy the wider outlook west to north over Alfrick Pound to the hills beyond. Those tracks

- appear to drop in altitude away from the site within the reserve, limiting access to the same views just a short distance away. There are therefore receptors of significant importance able to see the site and hence being able to see the development; people out to enjoy the natural countryside and open views.
22. Considerable effort has been put into designing the landscaping to surround the building, and there would be some enhancement of its ecological potential as a result. There would be an element of re-profiling of levels to integrate the built form with the landscape and the formation of the orchard would be a benefit, in line with the stated aims for the Area of Outstanding Natural Beauty.
23. However, whilst the criterion in paragraph 55 does not explicitly state that the requirement is only visual, those enhancements have to be discounted to a significant degree by the introduction of un-natural land forms derived from the building form, and the benefits of the landscaping scheme and other ecology measures cannot entirely be divorced from the building design. Whilst the landscaping would be of a high standard, and an enhancement of the existing mown over-domestic lawn, the landscaping design is predicated on a building design that does not reach the high standard sought.
24. The final criterion concerns the wider, but local area. The site is within the large Malvern Hill Area of Outstanding Natural Beauty, which extends considerably south of the site and only to a limited extent further north or east. Paragraph 115 of the Framework states that great weight should be given to conserving landscape and scenic beauty in Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty. More locally the site falls within the 'principal wooded hills' character area identified in the Council's Landscape Character Assessment, described as having a flowing woodland cover that is a key visual element within the landscape, and there are sparsely settled pattern of farmsteads and wayside dwellings.
25. From these sources and from observation at the site inspection, the defining characteristic of the local area can be identified as being a sporadic linear form of development along Stocks Road, and edging up High Tor Lane in a yet more sporadic form. This provides glimpses through gaps of the wooded areas and looking out from the appeal site there is the wooded ridge opposite to the north-west and dispersed buildings in the intervening valley. The appellant's Landscape and Visual Impact Assessment indicates that looking back from the higher ground of the north-west would show a similar pattern of development, in which the appeal proposal would not appear unduly intrusive or different at that distance. The extent to which it would be subsumed within the wooded backdrop, and the use of materials would assist in this.
26. However, more locally still, the undeveloped appeal site appears as an open setting to the wooded nature reserve, which benefits from being designated as a Site of Special Scientific Interest and Ancient Woodland up to the eastern site boundary. That open setting appears to run along the boundary and off site in both directions, and is evident to, and would be appreciated by, receptors on the lane as well as those looking from Stocks Road towards the woodland. This openness defines the quality of the woodland and would be largely disrupted and eroded by the presence of the dwelling. The proposal would not satisfy the last criterion of the exception in being sensitive to the defining characteristics of the local area.

27. In the foregoing considerations, it is accepted that the Council did not identify visual harm, but an appeal to the Secretary of State is considered as if the application had been made to him in the first instance as stated in Paragraph: 006 Reference ID:16-006-20140306 of the Web-based Planning Practice Guidance. The appellant has addressed all criteria and has provided evidence as to the visual effect.
28. To conclude on this main issue, the presence of the proposed dwelling would not be sensitive to the defining characteristics of the local area, and would not reach the standards of being a truly outstanding design, with limited opportunities identified for raising standards of design more generally in rural areas. The quality of the landscaping and the enhancement of ecological proposals do not justify the presence of the dwelling, rather they go some way to mitigating harm which would not occur were it not for the proposed development. These failings outweigh the extent to which the 'ice storage system' can be said to be truly innovative, as such hidden technology does not justify the harm caused to the aims of countryside protection policies.
29. The proposal is contrary to Policy 2 and paragraph 55 in its location, and this is not overcome as an exception listed after that statement of restraint, since the exceptional quality or innovative nature of the design has not been proved. Policy 21 is not accorded with since although of a high design standard which satisfies parts of the policy requirements, the proposal fails to integrate effectively with its surroundings, so that limited weight can be attached to the areas of compliance.

Protected Species

30. Development Plan Policy 23 on biodiversity and geodiversity, states that development which would compromise the favourable conservation status of protected species will not be permitted, and development having an adverse effect on Sites of Special Scientific Interest will also not be permitted unless the benefits clearly outweigh the impacts.
31. One of the core planning principles in paragraph 17 of the Framework is to contribute to conserving and enhancing the natural environment and reducing pollution, and section 11 sets out policies for conserving and enhancing the natural environment. In particular paragraph 109 states that the planning system should contribute to and enhance the natural and local environment by minimising impacts on biodiversity and providing net gains in biodiversity where possible, contributing to the Government's commitment to halt the overall decline in biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.
32. The confirmed boundaries of the Leigh Brook Site of Special Scientific Interest and the Ancient Woodland are immediately at the east boundary of the site, with the access track and right of way as far as the proposed site entry being between the site and the designated areas.
33. As set out in the Main Issues paragraphs, the Council no longer contest this issue, subject to conditions. It was stated at the Hearing that the Inspector as Competent Authority would carry out an appropriate assessment, but that the agreed mitigation strategy by way of conditions seeking a Construction Environmental Management Plan, and adherence to recommendations on habitats, trees, lighting and the like, would likely limit the extent of that

assessment. In the event, the findings of the first main issue above lead to the appeal being dismissed and there is no necessity to consider this issue further. The aims of Policy 23 and the Framework, as well as legislation would be accorded with.

34. Similar to the findings in the first main issue, the ability to successfully mitigate the harm to the protected designations and European Protected Species does not add weight in favour of the proposal. It is acknowledged that the enhancement would likely not occur without the development, but in the balance, that would be acceptable.

Other Considerations

35. Policy 4 concerns the need to travel and the location of development, although by its nature, a paragraph 55 proposal will be isolated, as confirmed by the Braintree judgement. A bus was seen between Alfrick Pound and Alfrick when viewing the location on the day before the Hearing, and again near Leigh on leaving the site after the Hearing, and it understood that this provides a service to Worcester and other locations. However, in failing to accord with the exceptions to paragraph 55 and its general statement of avoiding such development, the locational failings of the proposal adds weight to the decision to dismiss the appeal.
36. The appellant's personal statement refers to long-standing local family connections, with the aim not being to sell on the site with the benefit of permission. Some more recent misfortunes were alluded to at the site inspection. Limited weight can be attached to these matters however, and it would be wholly inappropriate to attach any type of personal permission to a permanent dwelling.
37. There had at one time been a dwelling or holiday cottage on the site but this has long since gone with little physical remains. The site is not previously developed land as defined in the Annex 1 Glossary of the Framework, and no weight can be attached to this matter.
38. The formation of the orchard as a distinct ecological and landscape benefit is acknowledged, but although apparently unlikely to be formed otherwise, this does not rely on the development of a dwelling, and does not outweigh the harm and lack of policy compliance identified.
39. Lastly, it is the agreed fact that the Council are able to demonstrate a 5 year supply of housing land and hence paragraph 14 of the Framework is not engaged. The proposal is not sustainable development with regard to the three dimensions in paragraph 7 of the Framework; the economic role is served to only a limited extent by a single house, similarly the social role, and the aims of the environmental role are seriously and demonstrably failed. As a result the proposal is not able to take advantage of the presumption stated in paragraph 14.

Conclusions

40. Whilst the proposed house would display design merit, and the landscape and ecology works would be of a good quality, the proposal fails to reach the high standard of being truly innovative or outstanding in design and the opportunities to raise standards generally appear limited. It may be considered to reflect high standards in architecture, but doubts remains over whether they

are the highest standards. The proposal would not be sensitive to the defining characteristics of the local area, although conditions could secure suitable mitigation with regard to the effect on the Site of Special Scientific Interest and the Ancient Woodland, as well as European Protected Species. In the balance, the special circumstances for an exception to the policy of restraint in Paragraph 55 have not been proved and the policies of the Development Plan that seek to focus development in the urban areas and to restrict development in the open countryside should prevail. For the reasons given above it is concluded that the appeal should be dismissed.

S J Papworth

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

S Rowles	Planning Officer Malvern Hills District Council
D Kinsella	Planning Officer Malvern Hills District Council

FOR THE APPELLANT:

J Day	Project Architect Poole Philips Associates
V Poole	Senior Partner Poole Philips Associates
C Reeve	Principal rca Regeneration Limited
P Wagner	Landscape Architect Page Wagner
F Sharpe	Principal Sharpe Ecology
L Higginson	Appellant

DOCUMENTS

Document	1	'Heating with ice' information submitted by Council
Document	2	Huff House Weybridge information submitted by Council
Document	3	Map of Leigh Brook Site of Special Scientific Interest boundary submitted by appellant
Document	4	Map of Ancient Woodland boundary submitted by appellant