The Planning Inspectorate

Appeal Decision

Hearing held on 11 April 2018

Site visit made on 11 April 2018

by G P Jones BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 April 2018

Appeal Ref: APP/J1860/W/17/3183987
The Former Gas Works, Lower Howsell Road, Malvern WR14 1UX

- 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 Jessup against the decision of Malvern Hills District Council.
- The application Ref 16/01079/FUL, dated 22 July 2016, was refused by notice dated 26 June 2017.
- The development proposed is the construction of 18 dwellings including access and landscaping.

Decision

1. The appeal is dismissed.

Preliminary matters

2. The Council's decision notice listed ten reasons for refusal. However, as detailed in the Statement of Common Ground, six of these reasons for refusal had been agreed between the parties prior to the Hearing taking place. Consequently, my decision focuses on those matters that are still in dispute.

Main Issue

3. From all that I have read, seen and heard I consider that the main issues are as follows:

   - Whether the proposal would be in an appropriate location, having regard to the aims and objectives of national and local planning policies that seek to restrict housing in the countryside outside of settlement boundaries;
   - The effect of the proposal on the character and appearance of the area, having particular regard to landscape character;
   - Whether sufficient information has been provided in regard to contaminated land;
   - The effect of the proposal on the living conditions of future occupants.

Reasons

Appropriateness of the location

4. Policy SWDP2 of the South Worcestershire Development Plan (SWDP), adopted 2016, provides a delivery strategy and settlement hierarchy. Amongst other

things, SWDP Policy SWDP 2 Part C states that the open countryside is defined as land beyond any development boundary, and development in such locations will be strictly controlled and will be limited to certain categories that include dwellings for rural workers, rural exception sites and replacement buildings.

5. It is common ground between the parties that the appeal site is located outside the development boundary for Malvern, which lies on the southern side of the railway line that abuts the southern boundary of the appeal site. In addition, the appeal site lies within one of the 'Significant Gaps', in this case between Malvern and Leigh Sinton, that is referenced in SWDP Policy SWDP 2 Part D. The purpose of the Significant Gaps is to provide additional protection to land that may be subject to development pressures and to help to maintain a clear separation between smaller settlements and urban areas. Policy SWDP 2D states that development proposals should ensure the retention of the open character of Significant Gaps and the proposal would not fall within any of the categories of development that the supporting text considers may be acceptable.

6. At the Hearing I heard from the appellant that the appeal proposal would be caught by the criteria in Part C of Policy SWDP 2 in relation to the limited categories of development that would be considered acceptable in the open countryside. This specifically references SWDP Policy SWDP 12 and also includes the caveat of, "*development specifically permitted by other SWDP policies*". Footnote no. 3 provides amplification and lists examples of SWDP policies comprising SWDP 8, 10 17, 20, 34, 35, 36, 41 and 42. However, to my mind this is not a closed list. It is the appellant's belief that the proposal would accord with SWDP Policies SWDP 12 and SWDP 13 and therefore would comply with Policy SWDP 2C.

7. Taking these other policies in turn, SWDP 12 relates to employment in rural areas. The only potentially relevant element of this policy would be Part B which refers to the protection of employment sites but states "*proposals to change the use of such sites to any non-employment generating purpose will need to demonstrate that the site has been actively marketed for a period of at least 12 months and that it is no longer viable for an employment-generating use*".

8. Whilst a marketing report was not submitted the appellant contends that such a marketing exercise would not be required. Annex F of the SWDP does state that it will be up to the decision-maker to decide if the individual characteristics of the property mean that it is unlikely to be re-let for the approved use. However, in my view the central thrust of Policy SWDP 12, including Part B, is to protect and support rural employment sites. The outcome of the proposed development would be to do the opposite, as it would replace an existing employment site with housing. Therefore even if I were to conclude that a marketing assessment would not be required, to my mind that does not mean that the proposal would be in compliance with Policy SWDP 12 as, apart from during the construction stage, the effect of the proposed development would be to remove rather than protect or expand a rural site commercial site that provides a degree of employment.

9. I then turn to SWDP Policy SWDP 13 which relates to making the effective use of land. SWDP 13 focuses on using previously developed land and also SWDP 13 Part G refers to an indicative target of 40% of housing development in the

Plan period being located on brownfield land. This indicative target is across all of the South Worcestershire Districts, and it is not disputed that the current figure achieved is 37% of housing on brownfield land. As such this indicative target has nearly, but not quite, been met and the proposal would make a contribution towards this. The appeal site is previously developed land and therefore falls within the ambit of SWDP 13 and also Policy SWDP 2G that seeks to encourage the redevelopment of brownfield sites. However, I consider Policy SWDP 13 contains general guiding principles and aspirations rather than being a policy that specifically permits development. Consequently, it would not be directly applicable in terms of the exceptions indicated in SWDP 2C.

10. It is not a matter of dispute between the parties that the Council can demonstrate a five-year supply of deliverable housing sites. Therefore I afford full weight to SWDP Policy SWDP 2. For the reasons I have given, I do not agree with the appellants' assertion that the proposal would fall within any of the categories of development that may be acceptable in the open countryside as indicated in SWDP 2C, and whist it would accord with SWDP 2G it would also be contrary to SWDP 2D. Therefore in taking a reasonable reading of SWDP Policy SWDP 2 as a whole, I consider that the proposal would be contrary to this Policy that seeks to strictly control development in the open countryside.

11. The appellant has cited other recent appeal decisions[1] that allowed development outside of designated settlement boundaries. In contrast the Council has also cited appeal decisions[2] that were dismissed including a recent appeal decision for the construction of two dwellings at Pendock outside the development boundary.

12. Consequently, I have been presented with appeal decisions that have taken a conflicting view in regard to the acceptability of proposals for housing outside a development boundary. Whilst I do not have the full details of any of these cases, three of the appeal decisions cited by the appellant were issued before the Council had adopted the SWDP and were at a time when it could not demonstrate a five-year supply of deliverable housing sites. The same housing land supply situation was the case for the appeal in Cheshire East.

13. The appeal decisions cited by the Council would have a more applicable chronological context since the SWDP had been adopted. However, the conjoined appeals in Lower Broadheath would seem to relate to land that was largely devoid of buildings, and the appeal site in Pendock would appear to have a different context from the proposal that is before me in terms of its relationship to local services and facilities.

14. Therefore, whilst I have had regard to these other decisions their circumstances differ from the proposal that is before me. As such, none of these other appeal decisions have been fundamentally determinative in regard to my decision and I therefore afford them only a limited degree of weight.

Character and appearance

15. The existing predominantly wooded area of the overall appeal site to the north-west of the public right of way would be retained as open space and would be managed as such. The area of the site to the south-east of the public right of

[1] Appeal references APP/R0660/A/14/2228115, APP/J1860/W/15/3002412, APP/J1860/A/13/2201174 and APP/J1860/A/14/2219414
[2] Appeal references APP/J1860/W/15/3139770 and APP/J1860/W/17/3177665, and APP/J1860/W/17/3181534

way contains a number of industrial-style buildings and also large stockpiles of soils, subsoils and other inert material, mainly near to the southern boundary of the site. However, this part of the appeal site is also reasonably open in places. The Statement of Common Ground indicates that the development would permanently and irreversibly reduce the openness of the site and I concur with this.

16. The proposal would comprise four and five bedroomed dwellings that would be two to two and a half storeys in height. Many of the dwellings would have a significant amount of fenestration on both their front and rear elevations, including many with rear first floor Juliet balconies. As indicated on the submitted plans a number of dwellings would occupy most of the width of their respective plots, thereby eroding the space between dwellings and creating a terracing effect.

17. Due to the somewhat constrained nature of the site the proposed housing layout would follow a long but relatively narrow form with most of the housing on either side of a central access road and facing inwards towards this road. By virtue of their scale, massing, layout and design the proposed dwellings would have an inward looking and suburban character and appearance.

18. The landscape character assessment for the area refers to 'Principal Timbered Farmlands' comprising, among other characteristics, a dispersed pattern of farmsteads and wayside cottages and a lack of strong settlement nuclei. The landscape immediately to the north-west of the railway line would accord with this general description, with the housing along Lower Howsell Road being mainly dispersed and facing towards this road.

19. The land to the immediate south of the railway line is allocated for a large scale residential and commercial development that would be built on the existing network of open fields. However, to my mind the railway line forms a clear separation between the suburban form of the existing and potentially the future built development and the more rural and dispersed settlement to the north. It is within this more rural landscape context that the proposed development would sit, and for the reasons I have given the proposal would represent a suburban incursion into the landscape. The proposed dwellings would be visible from public vantage points including parts of Lower Howsell Road and the surrounding rights of way network.

20. Therefore I consider the proposed dwellings by virtue of their scale, massing, design and layout would introduce a conspicuous suburban form into the landscape and thereby would have an unacceptable effect on the character and appearance of the area. As such, the proposal would be contrary to Policies SWDP 21 and SWDP 25 of the SWDP and Section 7 of the National Planning Policy Framework (the Framework) that seek, among other matters, to require development that is of a high quality design that complements the character of the area and is appropriate to and integrates with the character of the landscape setting.

Living conditions

21. The Council raised concerns regarding the amount of private outdoor amenity space for future occupants. However, the Council does not have any specific space standards adopted and in any event it is not disputed that the smallest rear garden area for any of the proposed dwellings would be 102m^2.

Consequently, I consider that the amount of private amenity space would be acceptable.

22. The Council also raised objections regarding the potential overlooking between some of the dwellings and was primarily concerned about the overlooking that would arise from the first floor outside terrace areas that are proposed for some of the dwellings. Of particular concern was the relationship between the proposed first floor terrace areas of plot nos. 9 and 10 that would be both close to and facing towards each other. I concur with the Council's view that this would give rise to an unacceptable degree of overlooking. However, the other first floor terraces would all have a more oblique view of the rear garden areas of the respective nearby properties and I consider that these would be acceptable in terms of their impact on the living conditions of future occupants in terms of loss of privacy.

23. Although the significant degree of overlooking between plot nos. 9 and 10 could potentially be rectified through the relocation or removal of one or both of the first floor terraces, that is not the proposal that is before me. Consequently, I consider that in its current form the proposal would be contrary to SWDP Policy SWDP 21 and paragraph 17 of the Framework that seek, among other matters, to secure a good standard of amenity and ensure that development provides an adequate level of privacy and outlook.

Contaminated land

24. The site has been previously remediated to a standard suitable for commercial use, although not all areas of the site have been remediated. The appellant has submitted an initial assessment and since the application was refused has submitted a Phase 1 Contaminated Land Assessment. It is not in dispute that a residential use would require a higher standard of remediation. The area of contention is concerning when the additional assessment work and accompanying information would need to be undertaken and provided.

25. Both the Council's consultants and the Environment Agency have maintained their objections to the proposal and consider that the submitted Phase 1 Assessment is lacking in detail and that additional work should be undertaken to inform a revised Phase 1 Assessment. However, I have regard to the work that has been undertaken and also the provisions of the recommended planning condition no. 15 which would require a phased approach to considering the matter of contamination.

26. The first part of the recommended condition stipulates that the development must not commence until a preliminary risk assessment in the form of a Phase 1 desk study and site walkover has been carried out. The Council was concerned that a site walkover had not yet been carried out and only a basic conceptual model had been presented. However, a site walkover and a conceptual model for all potential contaminants, sources and receptors are specifically referred to in 'Part a' of the recommended planning condition. The risk assessment including these measures would have to be approved before any development could take place. Furthermore, Part b of the recommended planning condition stipulates that where an unacceptable risk is identified a scheme for detailed site investigation must be approved and complied with.

27. I am mindful of the objections raised by the Environment Agency and the Council concerning the lack of supporting information in regard to

contaminated land. Nevertheless, it is my view that work that has already been undertaken combined with the wording of the suggested planning condition would provide an acceptable degree of certainty to ensure that the appropriate level of information and investigation would be undertaken and submitted, and that this would need to be approved and complied with before the development could commence.

28. Therefore I consider that subject to the imposition and strict compliance with this condition, the proposal would accord with SWDP Policy SWDP 31 which requires that development proposals must be designed to avoid any significant adverse impacts from pollution and that proposals will not be permitted where the land is contaminated and not capable of appropriate remediation without compromising viability or sustainable development.

Balancing exercise and conclusion

29. In accordance with paragraph 49 of the Framework I have considered this proposal in the context of the presumption in favour of sustainable development. In terms of its benefits, the proposed development would increase the supply of housing as required in paragraph 47 of the Framework. The Council contends that the rather homogeneous housing mix and lack of affordable housing would be a harm of the proposal. To my mind this would not represent a harm in itself, but it would temper the benefit of the increase in the supply of housing.

30. The site is brownfield land and the re-use of previously developed land is a clear benefit of the proposal. In addition, the proposal would entail the redevelopment of a site that is currently used for the storage and recycling of building materials and thereby would remove the associated HGV movements that are not restricted, and the noise and dust associated with these operations. The proposal would entail the further remediation of the site and would remove the existing stockpiles of material and buildings. The signalising of the railway bridge and creation of a footway along part of Lower Howsell Road would improve highway and pedestrian safety.

31. The proposal would ensure the wooded area to the north of the public right of way is maintained and managed as public open space, with access to this area being provided from the housing development. As such it would provide social, biodiversity and sustainable drainage benefits, albeit the drainage created would be to accommodate the proposed dwellings. In addition, the proposal would attract a Community Infrastructure Levy tariff and would also create some economic benefits, particularly by virtue of the construction operations required, and there would be a limited boost for the local shops due to the additional patronage.

32. However, the proposal would give rise to dwellings that would not be within the recognised development boundary for Malvern and would be in a Significant Gap. Therefore the proposal would not accord with the development plan in this regard. Overall I consider that there is no justification for reducing the weight that should be given to Policy SWDP 2 of the SWDP and thereby releasing the appeal site for unfettered residential development. To do so would conflict with paragraph 17 of the Framework which guides that planning should be genuinely plan-led.

33. The proposal also would give rise to harm to the character and appearance of the area and would not accord with the surrounding character of the landscape to the north of the railway line. Although it could potentially be rectified through an amended scheme, the proposal that is before me would also give rise to an unacceptable degree of overlooking between the future occupiers of two of the proposed dwellings.

34. I attach a considerable degree of weight to the harms that I have identified, and in particular the conflict with the development plan in terms of being outside the settlement boundary and within one of the Significant Gaps. Therefore I consider that the cumulative benefits of the other considerations in favour of the proposal would not outweigh the totality of the harm.

35. For the above reasons, and having regard to all other matters raised, including any other relevant development plan policies, I conclude that the appeal should be dismissed.

GP Jones

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Steve Faizey	S.P. Faizey Architects
Sian Griffiths	RCA Regeneration Ltd
Tom Perks	S.P. Faizey Architects
Gareth Sibley	RCA Regeneration Ltd
Chris Storey	Patrick Parsons

FOR THE LCOAL PLANNING AUTHORITY

Neil Kirby	Worcester Regulatory Services
Ciaran Power	Malvern Hills District Council

DOCUMENTS SUBMITTED AT THE HEARING

1. Extract from Worcestershire County Council Landscape Character Assessment
2. Map extract from Landscape Character Assessment
3. Site Plan drawing reference 14005/2C
4. Map depicting part of Development Boundary