
Appeal Decision

Site visit made on 16 April 2018

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

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

Decision date: 10th May 2018

Appeal Ref: APP/J1860/W/18/3192959

Heatheridge, Pendock, Worcestershire GL19 3PW

- 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 R Gittings against the decision of Malvern Hills District Council.
 - The application Ref 15/01403/OUT, dated 21 September 2015, was refused by notice dated 7 July 2017.
 - The development proposed is for 3 No. new dwellings, to include demolition of existing dwelling and outbuildings.
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Decision

1. The appeal is allowed and planning permission is granted for 3 No. new dwellings, to include demolition of existing dwelling and outbuildings at Heatheridge, Pendock, Worcestershire GL19 3PW in accordance with the terms of the application, Ref 15/01403/OUT, dated 21 September 2015, subject to the conditions as set out in the Schedule to this decision.

Procedural matters

2. The application was originally submitted for five dwellings; however, this was revised during the application process to three units. This is now shown in the banner heading and I have considered the appeal on the basis of three dwellings.
3. The application is expressed in outline with all matters other than access reserved for future consideration. An indicative site layout plan has been prepared that illustrates how three new houses could be accommodated on site. I have considered the appeal on the basis of an outline application and layout plans that are for illustration purposes only.
4. The Council's third reason for refusal relating to its requirements for residential development proposals to include provision for green infrastructure has now been overcome following the appellant revising his proposal to include such provision within the appeal site. The Council has confirmed that, in the event of the appeal being allowed, this matter could reasonably be dealt with by way of an appropriately worded planning condition. I consider the Council's suggestion to be an effective means of dealing with the issue of green infrastructure and have considered the appeal also on this basis.

Main Issues

5. Accordingly, the main issues in this appeal are firstly, whether the proposed development would be appropriately located having regard to the Council's spatial strategy for new housing and secondly, the effects on the character and appearance of the area.

Reasons

6. The appeal site consists of the property Heatheridge and its various outbuildings and part of a rectangular field located immediately to the north of properties that forms part of the distinctively linear village of Pendock. Comprising some 0.24 Ha in area, the appeal site adjoins open countryside to the north.
7. The development plan for the area comprises the South Worcestershire Development Plan (SWDP), a National Planning Policy Framework (the Framework) compliant development plan adopted in February 2016. Policy SWDP 1 seeks to ensure that development follows the broad presumption in favour of sustainable development as set out in the Framework. The Council believes the appeal turns primarily upon whether the proposed development would comply with Policy SWDP 2, which establishes the settlement hierarchy and development policy that should apply in the villages and open countryside. Criterion C of this policy defines open countryside as land beyond any development boundary and explains that development in the countryside will be strictly controlled and limited to certain exceptions, none of which apply in the case of this proposal.
8. In addition, the examining Inspector to the SWDP also found that the Plan's settlement hierarchy to be robustly evidenced-based and that consequently, in accordance with the Framework and the Planning Practice Guidance, the Council is presently able to demonstrate a five year supply of deliverable housing land.
9. The appeal site is irregularly shaped with only the front part of the site comprising the host property itself located within the development boundary for Pendock. This settlement is identified as a category 3 village in the Hierarchy of Settlements in Annex D of the SWDP which indicates, according to the Council, that it is a category of settlement that has at least two key services, including a shop and access to at least daily bus services for employment and shopping purposes. I saw at my site visit that the site is well located with regards to the primary school, shop and post office as well as the village church. The Council acknowledges that the site's location is reasonably sustainable in terms of proximity to such services and facilities and to public bus routes, albeit that the services are somewhat infrequent.
10. In this regard therefore, I do not consider that the appeal site is remote or isolated in the meaning set out in Policy SWDP 2 and is not divorced from the services and facilities that are available in Pendock. However, it is also clear that the Council having only recently adopted its development plan has not sought fit to allocate any land for housing development in this village. As a Category 3 village, Pendock occupies the fourth tier in the settlement hierarchy with Part B of Policy SWDP 2 limiting new housing to infill development within the defined settlement boundary subject to other development plan policy considerations. Infill development is not defined in the SWDP or in the

Framework; however, by any ordinary definition of the phrase, it would usually involve vacant plots within an otherwise built-up area and not include areas of open land that merely adjoin existing groups of dwellings. I do not consider that this supports the proposed development.

11. The appeal development would supply open market housing on the site; it would thus not meet the exceptions given in Policy SWDP 2C. In the current case, due to the relatively recent adoption of SWDP, the length of time the plan is due to be operative, and the spatial distribution of housing development across a number of allocated sites within higher order settlements, I have no evidence to conclude at this juncture that there would be difficulties in meeting the housing guideline. Thus, taking these matters together, I consider that the proposed development would be clearly contrary to these aspects of the development plan.
12. I note that the appellant considers the site to be sustainable. However, the proposed development conflicts with the policies of a recently adopted development plan, which was assessed as being in compliance with the Framework, and indeed the Council can demonstrate a 5-year supply of housing land, a position that is unchallenged by the appellant. For these reasons the relevant policies of the development plan are not out of date, absent or silent and as a consequence, the presumption in favour of sustainable development set out in paragraph 14 of the Framework does not apply in this case. That said, the provision of a minimum five year housing supply is not to be considered as an upper limit and the Framework at paragraph 47 seeks to significantly boost the supply of housing.
13. I do not consider the appeal site is isolated from the services and facilities in the village and the appeal scheme would make a useful contribution to supporting its overall economic and social vibrancy as well as supporting other nearby settlements. I am particularly mindful also that policy SWDP 2 sets out that sites of an appropriate scale in Category 3 villages will be necessary to address the need for housing and support local services. The site is neither remote nor isolated in the meaning set out in Policy SWDP 2 as it is not divorced from other development, including the facilities that are available in Pendock. The proposal for three houses at a suitable location would not therefore seriously prejudice the development plan strategy for housing as a whole.

Character and appearance

14. The extended curtilage of Heatheridge comprising the amended appeal site and containing a pole barn and a low elongated workshop together with garages, associated hardstandings and a shed located alongside the host property and in the northern portion of the site would represent significant built forms that extend the village envelope at this point. Beyond the site to the north and west is pasture fields bounded by hedges and trees and which defines the natural boundary and beyond, open countryside. The appeal site does not contain any sensitive or vulnerable landscape elements or features.
15. Despite the stated form of the proposed development being likely to be taller than the relatively low form of most of the existing ancillary outbuildings, the proposed houses would nevertheless complement the form of development that is found in the village. They would moreover allow views of the open countryside beyond from the village road to be maintained. From the rights of

way to the north and north-west, it is likely that the proposed development would be viewed as forming part of the settlement, particularly given the planting scheme that is now proposed to the rear of Plot 3. In scale, form and layout, the proposed houses would be modest and in keeping with other similar developments elsewhere in the village.

16. For the above reasons, I therefore conclude that the proposed development would not harm the character and appearance of the area and would instead respect the form and layout of existing built form at this location. It would therefore comply with policies SWDP 21 and SWDP 25 which sets out to require the protection of the character and appearance of the area and landscape.

Planning Balance and conclusions

17. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications be determined in accordance with the development plan unless material considerations indicate otherwise. There is no dispute that the Council is able to demonstrate a five year supply of housing land and, having regard to paragraph 49 of the Framework, I have seen nothing that suggests the Council's housing policies are not up-to-date. Thus, the weighted balance at the fourth bullet point of paragraph 14 of the Framework is not brought into play in this appeal. That said, I am still required to apply the planning balance of the particular circumstances of the appeal development.
18. From what I gleaned from my site visit, while part of the appeal site is located outside the development boundary contained in Policy SWDP 2, it is nevertheless in an accessible location and I have found that the removal of unsightly structures would lead to an enhancement of the character and appearance of the area.
19. As noted above, the Barwood judgement indicates that a proposal cannot be a sustainable development if it is inconsistent with paragraph 14 of the Framework. However, I have considered the proposal against the three dimensions of sustainable development – economic, social and environmental – set out in the Framework and have also assessed its benefits.
20. Paragraph 55 of the Framework supports housing in rural areas where it will enhance or maintain the vitality of the village by the addition of new households where it would be reasonable to expect that they would participate in the local community and make use of village services and facilities. Moreover, the construction of new housing would make a modest contribution to the local economy. The proposed development would therefore have social and economic benefits.
21. With regards to the environmental dimension, I have found that the appeal site contains a number of low quality buildings that would be replaced conceivably with higher quality permanent buildings resulting in the enhancement to the character and appearance of the area. Moreover, the revised site area would result in buildings that would not project into open countryside and would be viewed as part of the settlement and would not result in any harm to the Area of Outstanding Natural Beauty. In addition, the development would through an appropriately worded condition provide biodiversity enhancement in accordance with Policy SWDP 22 and paragraph 109 of the Framework.

22. Taking all the above matters into account, I consider that the benefits of the appeal scheme are sufficient to outweigh the conflicts with the development plan and that weighty and therefore exceptional material considerations sufficient to grant planning permission would apply in this case.

Conditions and overall conclusion

23. The Council has suggested a number of conditions, which have generated further comments from the appellant. These have been assessed against the guidance contained within the Planning Practice Guidance with the wording of some amended to aid clarity.
24. In addition to the standard outline conditions relating to commencement and submission of reserved matters, a condition is attached to specify the approved drawings to provide certainty. A requirement to submit and approve a construction method statement and final floor levels for prior approval and thence implementation therewith are necessary given the close proximity of neighbouring properties.
25. The appellant's ecology report found little ecological interest, including evidence of the presence of habitats for protected species. However a requirement for approval and implementation of a landscaping scheme is included to preserve the character and appearance of the area. A condition requiring ecology enhancement in order to promote biodiversity commensurate with the ecological survey evidence is also necessary. In addition, tree protection measures should be agreed to protect existing trees on site in the interests of visual amenity. For the same reasons and to protect ecological interest, a requirement for the approval of details of lighting by the Council is also deemed necessary.
26. In the interests of highway safety, conditions are attached that require the timely provision of an access to Council standards, turning and parking facilities together with the required visibility splay. Conditions are also included requiring approval of foul and surface water drainage details and to ensure that sustainable urban drainage principles are applied to the surface water drainage proposals in order to protect living conditions and to alleviate flood risk.
27. Conditions are also included requiring the provision of broadband measures and for the development to incorporate energy and water management efficiency measures in order to satisfy development plan policy objectives for such provision. In addition details of waste facilities are necessary to protect living conditions. Finally a condition limiting the hours when construction activities may take place on site is also necessary in order to protect the living conditions of nearby occupiers.
28. For the above reasons and having considered all other matters raised, I conclude that the appeal should succeed.

Gareth W Thomas

INSPECTOR

SCHEDULE OF 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) The development hereby permitted shall be carried out in accordance with the following approved plans: 3893s Rev01; 3894GI-01; 3894bl Rev02, and; 3894acc Rev01.
- 5) The landscaping scheme to be submitted in accordance with condition 1 of this permission shall include details of boundary treatments including screen walls and fences and wider site boundaries, surface treatments to drives, cycle and footways, tree and shrub planting with provision for tree planting to be carried out concurrently with the development and completed within 1 year of substantial completion of the development. If within a period of 5 years from the date of the planting of any tree, 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.
- 6) No demolition, site clearance or building operations of any type shall commence until a protective fence (of at least 2 metres in height and in all other respects in accordance with BS 5837 (2012) Trees in Relation to Design, Demolition and Construction and previously approved in writing by the Local Planning Authority), has been erected around the trees and hedgerows to be retained within the site and around those trees and hedgerows outside the site whose Root Protection Areas (RPA) (as defined in BS 5837 (2012)) fall within the site, at the outer limit (or beyond) of the their RPA or in a position agreed in writing by the Local Planning Authority. This tree protective fencing should remain in place until all construction and associated ground-works have been completed.
- 7) Any reserved matters applications submitted in response to condition 1 of this permission shall include a scheme for ecological compensation and enhancement measures. The scheme shall be implemented in accordance with approved details and all features retained in that manner thereafter.
- 8) Before the development hereby permitted is first occupied details of any external lighting to be provided in association with the development shall be submitted to and approved in writing by the local planning authority.

Only external lighting in accordance with approved details shall be provided on the application site.

- 9) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period.
- 10) Demolition/ground works/construction work shall not take place outside the following hours:
 - a. Monday to Friday – 08:00-18.00 hrs
 - b. Saturdays - 07.30-13.00 hrs
 - c. There shall be no such work on Sundays or Public Holidays.
- 11) Any reserved matters applications submitted in response to condition 1 of this permission shall include details of the levels of the existing site, the proposed slab levels of the dwellings and a datum point outside of the site.
- 12) Any reserved matters applications submitted in response to condition 1 of this permission shall include details of sustainability measures from renewable or low carbon sources equivalent to at least 10% of predicated energy requirements (including energy, waste, recycling and water management) to be incorporated into the design of the dwellings hereby approved, to reduce energy usage and running costs for future occupiers shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented and retained thereafter.
- 13) Any reserved matters applications submitted in response to condition 1 of this permission shall include details of secure parking for cycles to be provided within the curtilage of each dwelling and these facilities shall thereafter be retained for the parking of cycles only.
- 14) 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.
- 15) No development shall commence until drainage plans for the disposal of foul water flows have been submitted to, and approved in writing by, the Local Planning Authority. The scheme shall be implemented in

accordance with the approved details before the development is first brought into use.

- 16) Prior to the commencement of the development a Water Management Statement, setting out water efficiency measures, shall be submitted to, and approved in writing by, the Local Planning Authority. Specifically, it must be demonstrated that the daily non-recycled water use per person will not exceed 110 litres per day. The scheme shall be implemented in accordance with the approved details before the development is first brought into use and retained thereafter.
- 17) Prior to installation, details of broadband provision shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details before the development is first brought into use and retained thereafter.
- 18) 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 62 metres to the south west and 57 metres to the north east 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.
- 19) Prior to the first occupation of any dwelling hereby approved, the construction of the vehicular access together with turning areas and on-site parking facilities shall be carried out in accordance with a specification to be agreed in writing by the local planning authority. Such facilities shall be retained for such agreed purposes thereafter.
- 20) Before any development begins, details of facilities that allow occupiers to separate and store waste for recycling and recovery shall be submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved details.