



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/17/3191631

Zourka, Church Lane, Broadwas WR6 5NQ

- 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 BGL Developments Ltd against the decision of Malvern Hills District Council.
 - The application Ref 17/00169/FUL, dated 24 January 2017, was refused by notice dated 26 Jun 2017.
 - The development proposed is for the demolition of bungalow and outbuildings and erection of three dwellings and garages, alterations to existing and formation of access to Church Lane, internal private footway adjoin the A44 and bat barn with associated landscaping.
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Decision

1. The appeal is allowed and planning permission is granted for the demolition of bungalow and outbuildings and erection of three dwellings and garages, alterations to existing and formation of access to Church Lane, internal private footway adjoin the A44 and bat barn with associated landscaping at Zourka, Church Lane, Broadwas WR6 5NQ in accordance with the terms of the application, Ref 17/00169/FUL, dated 24 January 2017, subject to the conditions in the Schedule attached to this decision.

Procedural matters

2. The name of the appellant has changed from that shown on the application. Although the change of applicant's name did not carry forward to the Council's decision notice, there is sufficient information to confirm that the appellant's name was changed during the application process, including written exchange between the appeal parties to this effect. Accordingly, I have revised the appellant's name as depicted in the banner heading.
3. Amended drawings have been submitted as part of this appeal. They seek to retain the existing planting and enhance landscaping along Church Lane as well as omitting pedestrian access directly onto the lane. As these amendments do not substantially alter the proposal that is before me, I do not believe that anyone has been prejudiced by these submissions and I have taken these into account in the determination of this appeal.
4. The Council's second reason for refusal relating to potential damaging effects arising from the proposed development on the nearby SSSI has now been withdrawn following submission of further details of drainage details. I do not consider this issue further.

Main Issues

5. Consequently, 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, including the setting of nearby listed buildings.

Reasons

Suitability of location and spatial strategy

6. The appeal site comprises a relatively flat rectangular shaped mature garden area belonging to a single storey dwelling that sits within an extensive curtilage area to the south of the A44. Access is proposed from Church Lane that leads from the A44 in a southerly direction and serves a number of rural dwellings and the church. This area, an enclave of development, is physically separated from the main body of the village lying a short distance to the north and east.
7. The development plan for the area comprises the South Worcestershire Development Plan (SWDP), which is a National Planning Policy Framework (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.
8. Although the appeal site is outside the development boundary for Broadwas, it is located within a distinct enclave of development centred on the village church. Broadwas is identified as a category 2 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. There is no distinct village centre to Broadwas as such; the main linear cluster of development that forms the somewhat tightly drawn development boundary lies either side of the A44 to the east and north of the village school along with a village hall and public house. I am not aware that the village has a shop despite a general reference in Policy SWDP 2.
9. From what I saw, I do not consider that the appeal site is remote or isolated in the meaning set out in Policy SWDP 2; it is not divorced from other development, including the facilities that are available in Broadwas. The proposed private pavement linking with the village footway alongside the A44 would connect the development to these facilities as well as to local bus routes. In this regard, I am satisfied that the proposed development would integrate satisfactorily with the settlement, much in the same way as this part of the village also integrates with the modern part of the village to the east. These are issues that the Council believed supported the principle of the appeal site being relatively sustainable in the context of pre-application discussions.
10. Furthermore, I am cognizant of the fact that the Council itself has allocated a site for development immediately to the west of the school that is currently

being built out, which demonstrates that the village is capable and suitable to accommodate further housing growth. In addition, the Council itself has identified it as a suitable settlement for such growth.

11. The Framework at paragraph 47 seeks to significantly boost the supply of housing. Whilst the Council can demonstrate that it has a five year's supply of deliverable housing land, there is nothing in national policy that sets such a supply as a maximum. In addition, paragraph 55 of the Framework suggests that housing in rural locations should be located to enhance or maintain the vitality of rural communities.
12. My attention has been drawn by both parties to recent appeal decisions within the areas covered by the SWDP. The appellant draws my attention to an appeal decisions at Pendock¹ where housing development was allowed in a lower category village in much the same circumstances as the current appeal proposal and where the relevant Inspector concluded that such modest scale development would have been unlikely to prejudice the Council's spatial strategy. By contrast, the Council explains that the appeal decisions cited by the appellant were subject to applications that were submitted in 2016 and before the High Court 'Barwood' judgement², which indicated that a proposal which is inconsistent with paragraph 14 of the Framework should not be considered to be "sustainable development" in the manner envisaged by that paragraph.
13. The Council draws particular attention to an appeal decision³ to the east of Church Lane suggesting that its rural character could reasonably be also applied to the current appeal site. It is notable that the Inspector in his reasoning considered that the area centred on the church and Broadwas Court formed the "historic core" of the village and believed that development of the field to the east of Church Lane would undermine the strong sense of openness when viewed from both the historic core to the west and the modern part of the settlement to the north.
14. Forming part of the "historic core" however, the appeal site has a quite different character. It is neither open nor does it contribute to the rural character in the same way and is largely and effectively concealed by existing screening. Moreover, the significant hedge removal and construction of an urbanised site access and access road would not be repeated here.
15. Also by comparison, from my site visit and perusal of the demolition plan accompanying the appeal papers, it is also clear that the site contains not only Zourka but also a number of associated outbuildings and built features. In this regard, whilst the footprint of the proposed development would occupy a larger area than those buildings and structures present at the site, these nevertheless represent a significant proportion of the appeal site. The appeal site cannot be described as a garden area within a built up area so one of the Framework's core planning is to encourage the reuse of previously developed land (PDL). The Council itself confirms it would have little objection to the redevelopment of Zourka, including through the building of a new dwelling plus a percentage increase in footprint. However, as a large curtilage containing several other

¹ APP/J1860/W/3155541 and APP/J1860/W/3135877

² East Staffordshire BC v SSCLG and Barwood Strategic Land [2016] EWHC 2973 (Admin), dated 22 November 2016

³ APP/J1860/W/3159764

minor structures, the use of PDL would be consistent with the reasoned justification accompanying SWDP Policy SDWP 2 and indeed with sub-section G of the policy itself.

16. In view of the above points, whilst the site lies outside the development boundary and would have some conflict with Policy SWDP 2, I conclude that the appeal proposal would be a suitable site for development having regard to national and local policies that seek to promote sustainable patterns of development. In this regard, the appeal proposal would not be contrary to Policy SWDP 1 which set out the Council's overarching sustainable development principles, or with the core planning principle of the Framework to actively manage patterns of growth to make the fullest use of public transport, walking and cycling and focus significant development in locations that are, or can be made sustainable.
17. Clearly, the appeal site is not 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 2 villages will be necessary to address the need for housing and support local services. The proposal for three houses at a suitable location would therefore be unlikely to seriously prejudice the development plan strategy for housing as a whole.

Character and appearance/setting of listed buildings

18. The proposed development comprises a traditional two storey dwelling in the north-eastern section of the site, which has been deliberately designed to reflect existing dwellings fronting the A44 and two barn-like houses clad with timber boarding and set in a typically agrarian courtyard behind the two storey house. Garages are set back behind the dwellings whilst a bat barn is proposed in the south east corner. The development would be accessed from Church Lane by way of a 3.5m wide single width private access drive. Extensive additional planting is proposed that will reinforce the existing planting with the existing railings retained along Church Lane.
19. Revised plans have been submitted to overcome some of the concerns expressed in the officer report, including removal of the pedestrian access to Plot 1 from Church Lane and the provision of additional planting at a location where the access bends north-westwards. From Church Lane, the access drive would have a rural appearance with tree and shrub planting helping to create a low-key access.
20. I would agree with the officer report that the buildings themselves have been designed to incorporate agricultural and vernacular characteristics and would be substantially concealed from views towards the site from most directions. The arboriculture report proposes that the existing extensive tree and shrub cover will be effectively maintained and enhanced in accordance with landscaping proposals.
21. The proposed development would concentrate development within a central portion of the appeal site towards the extensive planting belt to the south of the A44. It would be consistent with the built form of this part of the village comprising the historic core of Broadwas. I therefore consider that in the overall context and pattern of development in the area, the scheme would be

- acceptable. Furthermore, the site is well-contained by existing vegetation unlike other prominent fields in Broadwas that have been considered for development. The scheme also proposes appropriate further tree and shrub planting.
22. The historic core of the village contains a number of listed buildings, including the Church of St Mary Magdalene (Grade II*), Broadwas Court (Grade II) and Badgers Bend (Grade II). In addition, Stone Farmhouse and Hop Kilne (Grade II*) lies on the opposite side of the A44 from the appeal site. The Council has not raised any concerns in relation to the effects of the proposed development on the settings of the listed buildings.
23. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that, when considering whether to grant planning permission for development that affects a listed building or its setting, special regard shall be had to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. The Framework defines the setting of a heritage asset as the surroundings in which the asset is experienced, pointing out that that the extent of the setting may change as the asset and its surroundings evolve.
24. The building and churchyard of St Mary Magdalene is located some 60 metres or so to the south of the appeal site and beyond Badgers Bend with an intervening belt of trees. I would agree with the appellant's assessment that the appeal development would have no impact on the setting of the church or its associated structures.
25. Broadwas Court, an early C19 country house, lies to the south-west of the appeal site in extensive grounds. From my site visit, I observed that this house is not visible from the appeal site due to the extensive intervening planting as well as a small number of cottages to the east. A recently built garage immediately beyond the western boundary of the appeal site and to the north of Broadwas Court is visible from the appeal site. I would concur with the appellant that the appeal site falls outside the setting of Broadwas Court and development as proposed would not therefore result in any harm to the heritage asset.
26. Badgers Bend is also screened from the appeal site by substantial planting within the curtilage of this listed building and both the existing and proposed tree planting within the appeal site. Its setting is defined by its close historic and physical relationship with Broadwas Court and the cottages to the south. There are a number of intervening buildings and substantial planting that further divorces this group of buildings, including Badgers Bend from the appeal site. I would again concur with the appellant that the appeal development would have no impact on the setting of Badgers Bend.
27. In terms of Stone Farmhouse and Hop Kilne, the A44 means that its curtilage is physically separate from the appeal site; further, there is a substantial tree belt that would mean that the proposed development would be effectively screened from this listed building. I agree with the appellant that the proposed development would have no impact on its setting.
28. For the above reasons, the proposal would be in general accordance with Policy SWDP 21 that requires new development to integrate with its surroundings through its siting and layout, relationship to other development and respect for

the identity and character of settlements through detailed design and use of appropriate materials, as well as providing high quality landscaping. I also consider it to be in accordance with Policy SWDP 25 that seeks to ensure that development proposals and their associated landscaping are appropriate to and integrate with landscape character and setting. The appellant refers to Policy SWDP 5 and the site being located within 'Principal Timberlands' designation. However no further evidence on landscape character assessment is provided by either party.

29. I also conclude that while the proposed development on the appeal site might be within reasonably close proximity to the listed buildings described above, it would not affect any part of the settings to those heritage assets which contribute to the significance as listed buildings, which would therefore be unharmed. Their special interest would be similarly preserved.

Planning balance and conclusion

30. 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.
31. 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.
32. In terms of its benefits, the proposal would lead to construction work and other economic benefits arising from future households spending on services and facilities in the local area. It would also help to enhance and maintain the vitality of the rural area. Despite the modest nature, these are positive economic benefits.
33. The proposed development would lead to an increase in the supply of housing as required by paragraph 47 of the Framework on a site that could be considered at least in part to have been previously developed and which I have found to be reasonably located with regard to the facilities and services of this Category 2 village and to public transport opportunities. The social benefits of supporting strong, vibrant and healthy communities through the supply of housing to meet the needs of present and future generations counts in favour of the proposal.
34. With regards to the environmental dimension, I have found that the appeal site lies within and has a close physical relationship with the historic core of the village, albeit outside the development boundary. Nevertheless, the site is well screened and has all the hallmarks of a developed garden curtilage to an existing bungalow containing man-made structures and features. It is quite different to the open nature of the field on the opposite side of Church Lane

that was dismissed on appeal and which has been cited in both Council and third party representations.

35. Moreover, the design of the proposed development is in keeping with the local rural vernacular and care has been taken to further enhance the wider setting such that it would cause no harm to the character and appearance of the area or have any harmful impacts on the setting of listed buildings in the immediate area. On the contrary, I have found that the proposed development would remove an existing bungalow of indifferent quality as well as a neglected extensive curtilage area containing ad hoc structures and domestic paraphernalia. The environmental enhancements that would be offered through the appeal development represent a positive feature of this proposal. Thus I see no unacceptable conflict with the environmental dimension of sustainable development.
36. Whilst concerns have been expressed by local residents that the land is liable to flood, that the access onto the A44 is potentially dangerous and Church Lane itself is too narrow, these concerns are not shared by either the Council or its statutory consultees. The absence of such harms is a neutral consideration in this appeal however.
37. 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

38. 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.
39. In addition to the standard time limit for commencement of development, I have included a condition specifying approved drawings to provide certainty. Conditions are included that require the Council's prior approval in writing of all external materials, boundary treatments, tree protection works, final floor levels of houses and withdrawal of permitted development rights for ancillary structures and other alterations and, for those details to be subsequently implemented, in the interests of protecting the character and appearance of the area.
40. Given that the details show landscaping details, I have included a condition to require implementation of these proposals within a prescribed time period, again to provide certainty that these works are carried out in order to enhance the character and appearance of the area. This condition also includes the requirement that the landscaping details also provide biodiversity net gain.
41. In the interests of highway safety, conditions are attached that require the timely provision of the agreed access, turning and parking facilities together with the required visibility splay. A condition is also included to ensure that sustainable urban drainage principles are applied to the surface water drainage proposals in order to alleviate flood risk.
42. A condition relating to ecology is included so that the development contributes to the conservation and enhancement of biodiversity in accordance with the

Council's planning policies. Conditions are also included requiring the provision of broadband measures and for the development to incorporate energy efficiency measures in order to satisfy development plan policy objectives for such provision. 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.

43. 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) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 111, 112 Rev D, 113, 114, 115, 116, 117, 118, 119, 19578/1 & 19578/2, demolition plan, PFA and Drawing No. Q034/1 Rev D.
- 3) No development above ground floor slab level of any part of the development hereby permitted shall take place until samples of all materials to be used in the construction of the external surfaces of the development have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) Before the first use of the development hereby permitted a plan indicating the positions, design, materials and type of boundary treatment to be erected shall be submitted to and approved in writing by the local planning authority. The boundary treatment shall be completed before the first use of the development hereby permitted. Development shall be carried out in accordance with the approved details
- 5) No development shall commence until details of both hard and soft landscape works have been submitted to and approved in writing by the local planning authority. These details shall be in general accordance with the Indicative Planting Plan Ref ccl/zb/IPP/001 and shall include additional planting that represents a net gain in priority habitat. The landscaping works shall be carried out in accordance with the approved details before any part of the development is first occupied in accordance with the agreed implementation programme.
- 6) No development shall commence until fences for the protection of trees to be retained have been erected in accordance with a scheme which has been submitted to and approved in writing by the local planning authority. The fences shall be erected in accordance with BS5837 (2012) and shall be retained until the completion of the development and no vehicles, plant or materials shall be driven or placed within the areas enclosed by such fences.
- 7) 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 33 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.
- 8) The development hereby permitted shall not be brought into use until the access, turning area and parking facilities shown on the approved plan have been provided. These areas shall thereafter be retained and kept available for those purposes at all times.
- 9) Prior to the first occupation of any dwelling hereby approved, details for the provision of secure parking for cycles shall be submitted to and approved in writing by the local planning authority. These shall be

provided within the curtilage of each dwelling prior to first occupation of each dwelling and shall thereafter be retained for the parking of cycles only.

- 10) No works or development shall take place until a SuDS management plan which will include details on future management responsibilities, along with maintenance schedules for all SuDS features and associated pipework has been submitted to and approved in writing by the local planning authority. This plan shall detail the strategy that will be followed to facilitate the optimal functionality and performance of the SuDS scheme throughout its lifetime. The approved SuDS management plan shall be implemented in full in accordance with the agreed terms and conditions.
- 11) Before the commencement of development hereby permitted an ecological mitigation and enhancement scheme shall be submitted to and approved in writing by the local planning authority. The scheme shall be based on the recommendations contained within the report by Richard Tofts Ecology dated December 2016. The scheme shall include an implementation timetable. The works shall thereafter be carried out in accordance with the approved details and timetable and retained thereafter.
- 12) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) (or any order revoking, re-enacting, substituting, amending, extending, consolidating, replacing or modifying that Order), no additions, extensions or external alterations to any of the dwellinghouses or building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwelling house other than those expressly authorised by this permission shall be constructed or carried out on the application site following the first occupation of the development hereby permitted.
- 13) The construction work on the buildings hereby approved shall not be commenced until the precise floor slab levels of each new building, relative to the existing development on the boundary of the application site have been submitted to and approved in writing by the local planning authority. Thereafter the new buildings shall be constructed at the approved floor slab levels.
- 14) Demolition, clearance or construction work and deliveries to and from the site in connection with the development hereby approved shall only take place between the hours of 08.00 and 18.00hrs Monday to Friday and 08.00 and 13.00hrs on a Saturday. There shall be no demolition, clearance or construction work or deliveries to and from the site on Sundays or Bank Holidays.
- 15) 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.
- 16) 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.

- 17) No development shall commence until, details of sustainability measures from renewable or low carbon sources equivalent to at least 10% of predicated energy requirements to be incorporated into the design of the motor workshop hereby approved, to reduce energy usage have been submitted to and approved in writing by the local planning authority. The approved details shall be implemented in accordance with a timetable to be approved in writing by the local planning authority and retained thereafter.