
Appeal Decision

Site visit made on 13 February 2018

by JP Tudor BA (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 16 May 2018

Appeal Ref: APP/J1860/W/17/3187036

Land at (OS 7958 4960) Stocks Lane, Newland, Malvern WR13 5AZ

- 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 Mrs Rachel Tudor against the decision of Malvern Hills District Council.
 - The application Ref 17/00572/OUT, dated 30 March 2017, was refused by notice dated 31 July 2017.
 - The development proposed is outline application for the erection of up to 5 No. dwellings with access from Stocks Lane. All other matters reserved.
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This decision is issued in accordance with Section 56(2) of the Planning and Compulsory Purchase Act 2004 (as amended) and supersedes the decision issued on 24 April 2018.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application is in outline only with all matters reserved for future consideration except for access. Indicative plans have also been submitted. I have considered the appeal on that basis.
3. One of the Council's reasons for refusal concerned allegedly inadequate visibility splays pertaining to the proposed access. The appellant has submitted an amended plan¹ with the appeal documentation, illustrating that visibility splays of 2.4m x 120m in both directions can be achieved. On that basis, the Council advises that its highway safety concerns have been adequately addressed. I see no reason to disagree with the Council's revised view on that issue. Neither do I see that any third party would be prejudiced by my accepting the amended plan, which seeks to clarify the access arrangement and also includes a minor change relating to the provision of a section of pathway within the site.
4. A recent High Court judgement, Braintree District Council v Secretary of State for Communities and Local Government & Ors [2017] EWHC 2743 (Admin) (the Braintree judgement) was issued on 15 November 2017, during the course of the appeal process. It was referred to by the appellant in their final submissions and the Council was given the opportunity to comment upon its relevance, which it did. Subsequently, the findings of the High Court have

¹ 2097-02 Rev A

been upheld in a Court of Appeal judgement issued on 28 March 2018². As the main parties had already commented on the original High Court Judgement, which was held to be sound by the Court of Appeal, there was no necessity to revert to the parties for further comment.

Main Issues

5. The main issues are:

- whether the proposed development would be in a suitable location, given that it is outside any settlement boundary and with regard to access to services and facilities;
- the effect of the proposal on the character and appearance of the area; and,
- whether sufficient information has been provided regarding surface water drainage arrangements.

Reasons

Suitability of location

6. The appeal site comprises a parcel of land to the north of ribbon development along Stocks Lane, which leads out of the rural village of Newland. Part of the site is occupied by stables, a shed and a former manège. However, it also extends eastwards within a field and a new boundary would be created, subdividing the field, aligned with the rear gardens of existing dwellings to the south. It is proposed that up to five houses would be constructed on the site.
7. Policy SWDP 2 of the South Worcestershire Development Plan (SWDP)³ sets out a development strategy and settlement hierarchy for the area. Amongst other things, it seeks to focus most development on urban areas, where housing need and accessibility to lower-cost public services are greatest. Windfall development proposals are to be assessed against the settlement hierarchy. Policy SWDP 2 also aims to safeguard the open countryside.
8. Newland is defined in the SWDP⁴ as a lower category 4B settlement with a low services provision and a low/medium level of public transport provision, although there appears to be a good bus service. The village does not have a defined settlement boundary and SWDP 2 says that such villages have a limited role in providing additional future development. Moreover, SWDP 2, part C, advises that land beyond any development boundary is defined as open countryside, where development will be strictly controlled and limited to various exceptions including, for example, dwellings for rural workers or replacement dwellings. The proposal does not meet any of the given exceptions.
9. The appellant refers to a number of allowed appeal decisions in support of their case. They also concern proposals outside development boundaries and the application of policy SWDP 2 of the SWDP within the Malvern Hills District Council area.

² Braintree DC v SSLG Greyread Ltd & Granville Developments Ltd [2017] EWHC 2743 (Admin); [2018] EWHC Civ 610

³ Adopted February 2016

⁴ Annexe D: Hierarchy of Settlements

10. With regard to the appeal at The Oaks⁵, that site was proximate to a Category 1 village, which are identified in policy SWDP 2 as suitable for market housing and assessed as having at least four key services. Moreover, the site was opposite a public house and bounded by existing residential development on three sides. It was considered that the site had more affinity with the village than the open countryside, an aspect I will discuss further later in my decision.
11. The appeal decision relating to Ivy Barn⁶ concerned a site immediately adjacent to the development boundary of a Category 2 village, where some market housing is also anticipated, and assessed by the Council as having at least two key services. Moreover, residential development already extended well beyond the appeal site on the opposite side of the relevant lane. A public house was close by with a shop and post office approximately 225 metres away and a school within about 600 metres.
12. In an appeal relating to Land off A44, Broadwas⁷ the site was described by the Inspector as immediately adjacent to the development boundary of a Category 2 settlement, with a number of facilities including a primary school, village hall and public house, all within 300 metres. The appeal relating to Land adjacent to Sawrey⁸ also concerned a site adjacent to the development boundary for Abberley Common, a Category 1 village. It was opposite the village shop and post office and situated within a small cluster of housing and it was found that the proposal did not represent an incursion into the countryside.
13. The appellant also cites an appeal at Brookend.⁹ However, the relevant village of Pendock was defined as a Category 3 village in policy SWDP 2 of the SWDP, assessed as providing some local services and facilities and suited to accommodate market and affordable housing needs. The village shop, post office, school and church were considered to be within a walkable distance by the Inspector. It also appears that the scheme involved a contribution towards affordable housing via a s106 agreement, in accordance with SWDP policy SWDP 15, as applied at that time.
14. In contrast to the above appeals, the appeal before me relates to a proposal on the edge of a category 4B village. Such villages are considered by policy SWDP 2 to have only a limited role in providing additional future development. The villages in the above appeals were all higher in the settlement hierarchy and in most cases the sites were adjacent to the settlement boundary. Although the appellant says that the proposal would only be 170 metres from an allocated urban extension site to the west, the fact remains that Newland does not have any defined development boundary owing, according to the Council, to its small and rural nature.
15. Furthermore, those other appeal proposals related to sites which were, in many cases, closer to existing facilities and services or bounded by existing residential development on more than one side. Therefore, whilst there are some similarities between those appeal proposals and the appeal before me, there are also significant differences. The Council has cited a dismissed appeal concerning 7 Broadwas Court¹⁰, which although more concerned with the effect

⁵ APP/J1860/W/16/3164684

⁶ APP/J1860/W/16/3164875

⁷ APP/J1860/W/17/3170968

⁸ APP/J1860/W/17/3172760

⁹ APP/J1860/W/15/3135877

¹⁰ APP/J1860/W/16/3156731

of a proposal on the setting of a listed building, also considers and applies the Council's spatial strategy, as expressed within policy SWDP 2. In any event, whilst consistency in decision making is very important, it is also a truism that all appeals must be judged on their individual merits and facts. I have determined the appeal before me accordingly.

16. The reasoned justification to SWDP policy SWDP 2 advises, in paragraph 4, that the high quality of the open countryside is an important attribute of the area and that sites beyond development boundaries generally are less sustainable as access to local services tends to be poorer and it is, therefore, appropriate that development in the open countryside is restricted. Policy SWDP 4 seeks to minimise the demand for travel and ensure that proposals offer genuinely sustainable transport choices.
17. Newland has a village hall, church and a public house, the Swan Inn, but occupiers would need to travel further afield to access most everyday facilities and services, such as shops. The appellant suggests that the site is within walking distance of Malvern with its range of services, facilities and employment opportunities, including a large supermarket. However, it is agreed between the main parties that the site is about 1.5km on foot from Malvern Retail Park, which is itself on the north eastern fringe of Malvern Link.
18. There is disagreement between the parties about the interpretation of relevant guidance in the Manual for Streets (MfS) concerning what constitutes a walkable neighbourhood. It refers to such neighbourhoods as being typically characterised by having a range of facilities within 10 minutes' (up to about 800 metres) which residents may access comfortably on foot. The MfS also says that it is not an upper limit and suggests that walking offers the greatest potential to replace short car trips, particularly those under 2km.
19. There is no footway fronting the site. The amended plan, referred to above and submitted with the appeal documentation, includes the provision of a footpath inside the site to link to the public right of way, which runs east. It is suggested by the appellant that the new section of footpath would also link to the pavement which runs along Stocks Lane. However, as I saw on my site visit, whilst there is a narrow section of roadside verge in front of the adjacent dwelling, the pavement does not begin until some 20-30 metres to the south of the existing site entrance. The absence of a roadside pavement, albeit for a relatively short distance, would still form a disincentive to journeys on foot, including trips to bus stops. The lack of street lighting along Stocks Lane would also discourage walkers in the evenings, especially during winter with its limited daylight hours.
20. There are bus stops about 400 metres or so from the site which offer a regular bus service between Worcester and Malvern, so there is at least one sustainable transport option, although use may still be affected by the footway issues referred to above. The appellant estimates walking times of 5 minutes to the bus stop, 19 minutes to the Malvern Retail Park, 24 minutes to the Enigma Business Park and 33 minutes to Malvern Link Train Station.
21. Whilst there is the potential for walking greater distances, it seems to me that a distance of up to about 800 metres and up to 10 minutes or so walking time is more likely to be contemplated as a comfortable walking option and a reasonable alternative to car use. Even more so, if the purpose of the journey is, for example, to purchase everyday items such as food supplies or shopping

as they would also have to be carried back home. Overall therefore, the likelihood is that there would be reliance on the private motor car for the majority of trips, even allowing for the possibility of some journeys by bus or on foot.

22. It was also suggested by the Council in their decision notice that the proposal would conflict with paragraph 55 of the National Planning Policy Framework (the Framework)¹¹, as it would represent an isolated dwelling in the countryside, where no special circumstances exist. However, the appellant cites the Braintree judgement, recently upheld in the Court of Appeal, which considered the interpretation of 'isolated' in the expression '*new isolated homes in the countryside*', as used in paragraph 55. The Courts have found that the word should be given its ordinary objective meaning of '*far away from other places, buildings or people; remote*' (Oxford Concise English Dictionary) and that 'isolated' connotes a dwelling that is physically separate or remote from a settlement. Given that the appeal site is immediately adjacent to existing residential development in the settlement of Newland, the site cannot be regarded as isolated in terms of its spatial or physical relationship to other buildings. Therefore, the proposal would not result in the creation of isolated homes in the countryside, within the meaning of paragraph 55 of the Framework.
23. I note the approach taken in an appeal decision relating to 12 Pound Lane,¹² referred to by the Council. The Inspector considers the Braintree judgement and refers to the lack of a 5-year housing land supply (HLS) that pertained in the Braintree case. The weight to be given to paragraph 55 of the Framework as a material consideration in the overall planning balance may be affected in a particular case by whether or not a 5-year HLS exists. However, that does not affect the court's findings about the objective meaning of '*new isolated homes in the countryside*', which would apply whether the 'tilted balance' in the fourth bullet point of paragraph 14 of the Framework was in play or not. That is also apparent from an appeal decision relating to Reardene¹³, where there was a 5-year HLS but paragraph 55, as defined in the Braintree judgement, was still considered a relevant material consideration to be weighed in the balance. Therefore, I do not agree with the implication that the Braintree judgement only applies in cases where there is no 5-year HLS.
24. Although the proposed houses would not be 'isolated' in terms of paragraph 55 of the Framework, the conflict with policy SWDP 2, part C of the SWDP remains. The development would also be contrary to the spatial strategy within SWDP 2 which gives a limited role to lower category villages, such as Newland, in providing additional future development.
25. Whilst paragraph 29 of the Framework says that people should be given a real choice about how they travel, it does recognise that opportunities to maximise sustainable transport solutions will vary from urban to rural areas. Nevertheless, the proposal would fail to accord with policy SWDP 4 of the SWDP as it does not minimise demand for travel or offer genuine alternative transport choices, as future occupiers would still, for the reasons given, be likely to use the private motor car for the majority of journeys. That is, in part,

¹¹ Published March 2012

¹² APP/L3245/W17/3180278

¹³ APP/H1840/W/17/3178753

why policy SWDP 2 seeks to focus most development in areas with easier access to services.

26. The appellant points to the proposed urban extension to Malvern on land some 170 metres to the south west of the appeal site, allocated in SWDP Policy SWDP 56. However, that covers some 56.84 hectares with 10 hectares of employment generating uses and some 800 dwellings. It would be on altogether different scale from the modest appeal proposal. Although I have been provided with limited details, a fully-fledged urban extension would be likely to have its own infrastructure and sustainable transport routes. Despite its proximity to Newland village it appears that there would be a visual separation. Moreover, that site is an allocation within the SWDP whereas Newland Village is defined in the same development plan as a lower category settlement with a limited role in providing any future development.
27. The proposal would clearly conflict with policy SWDP 2, part C, and the spatial strategy within the development plan. The likely reliance on the private motor car for access to everyday services would not facilitate walking, with its attendant health benefits. It would also contribute to pollution and fail to mitigate or adapt to climate change. That weighs against the proposal and conflicts with SWDP policy SWDP 4 and the Framework. Therefore, I conclude that the proposal would not be in a suitable location and conflicts with development plan policies.

Character and appearance

28. The glossary to the Framework defines '*previously developed land*' as: '*Land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure.*' On the basis of the existing stables, manège and stone chip hardstanding area the appellant submits that the site is '*previously developed land*', which appears to be accepted by Council. Part G of SWDP policy SWDP 2 and paragraph 111 of the Framework offer encouragement to the redevelopment of such brownfield sites, which favours the proposal.
29. The Council advises that the sites falls within the Principal Timbered Farmlands landscape character type (LCT), as defined in the Landscape Character Assessment Supplementary Guidance (SG).¹⁴ Although the Council indicates that the scheme does not reinforce the organic landscape characteristics of the Principal Timbered Farmlands LCT, the SG states that development is potentially acceptable in such settled landscapes dependent on the nature of the proposed scheme and the site.
30. Although the site may be classified as previous developed land, the existing stables and associated equestrian facilities are located in the western portion of the site near the road and the stone chip only covers roughly 25% of the area. The stables are low level modest timber structures, dark brown in colour, with corrugated shallow pitched roofs. They are not uncommon features in rural environments and are relatively unobtrusive.
31. Moreover, to the rear of the stables, as the land gently rises to the east, is an open grassed field, part of which forms the rest the appeal site. There are

¹⁴ August 2012

further agricultural fields to the east and north and to the west, on the other side of Stocks Lane. Therefore, although the appeal site adjoins a line of residential dwellings to the south, its equine facilities and grassed area have more natural affinity with the predominant surrounding rural landscape. The result of the proposal would be to extend the line of residential ribbon development leading out of the village into the open countryside.

32. Although the proposal is in outline only, the indicative plans suggest the prospect of 3 or 4 bedroom houses likely to be two storeys high. Even if those elements were modified, 5 houses located on land rising above the road, albeit set back, would be qualitatively different from the existing low-level stables and significantly more visually prominent in views from the road and the adjoining public footpath, notwithstanding the existing roadside hedge.
33. Residential development of that order with gardens and associated domestic paraphernalia would lead to the urbanisation of an essentially rural setting to the detriment of the intrinsic character and beauty of the countryside. Whilst the appellant suggests that appropriate landscaping would increase the screening along the site boundaries that would not sufficiently mitigate the adverse effects of extending residential development into the countryside.
34. The appellant asserts that the current private equestrian facilities are redundant and in an unsuitable location because of a lack of bridleways and busy surrounding 'A' roads, at either end of Stocks Lane. The Council disputes that and considers that there is demand for such facilities. Even if the appearance of the stables were to deteriorate causing harm to the appearance for the area that would ultimately be within the control of the appellant. Therefore, I give those aspects limited weight.
35. Overall, I conclude that, although it may be '*previously developed land*', the proposal would harm the character and appearance of this rural area. It follows that the development would be contrary to policies SWDP 2, SWDP 21, SWDP 25, insofar as they seek to safeguard and, wherever possible, enhance the countryside, ensure that development proposals complement the character of an area and are appropriate to, and integrate with, the character of the landscape setting.

Surface water drainage

36. In response to the Council's concerns about surface water drainage arrangements, the appellant has submitted a Drainage Assessment (DA)¹⁵ with the appeal documentation. It examines the drainage options and proposes that, although acknowledging the slow rate of infiltration, runoff could be dealt with via infiltration trenches behind the proposed dwellings, on land in the control of the appellant. An overflow is proposed draining any excess to nearby watercourses downstream of flooding issues on Stocks Lane. Concerns have been raised by some local residents about the existing flooding problems.
37. The South Worcestershire Land Drainage Partnership has commented on the DA, sought further clarification on some issues and expressed concern that the drainage to water courses would involve third party land and require easements. In response, the appellant's Consultant Hydrologist has, in the event that suitable wayleaves or easements could not be negotiated, identified

¹⁵ Stocks Lane Drainage Assessment (October 2017)

a fallback discharge point to the east on land which the appellant advises is within her ownership.

38. Whilst there is no option to drain to a public surface water or combined sewer, it appears that feasible surface water drainage options exist, which would enable the development to be drained without increasing flood risk elsewhere. Therefore, I am satisfied that a suitable worded pre-commencement condition, requiring a scheme to be submitted to the Council for approval, would ensure that the development complied with the requirements of policy SWDP 29 of the SWDP and paragraph 103 of the Framework.

Other Matters

39. In addition to the main issues dealt with above various other matters have been raised by Newland Parish Council and local residents, most notably highway safety. I appreciate the concerns about that issue, alleged speeding on Stocks Lane and the road accidents referred to. However, as explained in the preliminary matters section of my decision, the Council is now satisfied that the proposed visibility splays of 2.4 by 120m in both directions, which could be secured by condition, are more than adequate. I see no factual basis to disagree with the professional judgement of the District Council and County Highway Authority on that matter. In any event, I have dismissed the appeal on other substantive grounds.

Overall Balance and Conclusion

40. As stated in paragraph 11 of the Framework, planning law requires that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.¹⁶ Local plans are intended to be the means by which sustainable development is secured and up-to-date plans are intended to promote sustainable development. Paragraph 12 of the Framework advises that proposed development that conflicts with an up-to-date Local Plan should be refused unless other material considerations indicate otherwise.
41. There is no suggestion that the SWDP is absent, silent or out-of-date. It is agreed that the Council can demonstrate a 5-year HLS. Indeed, the Council advises that its supply was 6.68 years with a 5% buffer, as at 1 April 2017. Therefore, the 4th bullet point of paragraph 14 of the Framework concerning the 'tilted balance' does not apply. The judgement to be made is whether the proposal accords with the SWDP and, if not, whether there are material considerations sufficient to outweigh any conflict.
42. I have already found that the proposal would conflict with part C of SWDP policy SWDP 2, as it would be outside any development boundary and not meet the specified exceptions. It would also fail to accord with the spatial strategy and settlement hierarchy within policy SWDP 2, which aim to focus most development on urban areas with good access to services. The scheme would not satisfy the requirement of policy SWDP 4 to minimise the demand for travel and provide genuinely sustainable travel choices. Moreover, I have also identified harm to the character and appearance of the countryside contrary to SWDP policies SWDP 2, SWDP 21 and SWDP 25.

¹⁶ s38(6) Planning and Compulsory Purchase Act 2004 and s70(2) Town and Country Planning Act 1990

43. In addition to the appeal decisions considered above, the appellant has referred to a further appeal relating to 64 Biggleswade Road¹⁷. In that case, the Inspector allowed a proposal for up to 85 residential dwellings outside a settlement envelope despite that *'technical breach of one policy of the development plan'*.
44. The appellant makes the point, relying on the Biggleswade Road appeal decision and other appeal decisions already referred, that breach of a single criterion of a development plan policy does not necessarily mean that a proposal will be in conflict with the development plan, when read as a whole. However, in that Biggleswade Road appeal it is significant that the Inspector found that there would be no harm to the character and appearance of the countryside and accordingly found compliance with the development plan overall.
45. In the appeal before me I have found harm to the character and appearance of the countryside and likely reliance on the private motor car to access everyday services leading to conflict with a number of SWDP policies. On that basis, I consider that the appeal proposal does conflict with the development plan when read as whole, which is a matter of planning judgment.
46. The appeal decision concerning Reardene¹⁸ is also cited by the appellant in relation to the Braintree judgement. However, that judgement, upheld in the Court of Appeal, related specifically to the interpretation of the word 'isolated' in the context of paragraph 55 of the Framework, as used in the phrase *'new isolated homes in the countryside'*. I have already agreed with the appellant that on the basis of the Braintree judgements and consistent with the Reardene appeal, the proposal would not create new isolated homes in the countryside because they would be adjacent to existing residential development to the immediate south. Nevertheless, that finding does not preclude identifying harm to the character or appearance of the countryside or that a location relatively distant from everyday services would lead to reliance on the private motor car and be contrary to relevant development plan policies and other policies in the Framework. Such matters are then to be weighed in the balance.
47. Moreover, in the Reardene appeal the Inspector found conflict with the development plan but considered that conflict to be outweighed by other material considerations, including a fallback involving extant planning permissions for 3 dwellings and a previous appeal decision relating to the same site. Its position outside the development boundary, albeit in an emerging plan, had already been considered in that previous appeal. Therefore, whilst there are similarities, there are also marked differences between the circumstances of the Reardene appeal decision and the appeal before me. Consequently, aside for its references to the Braintree judgment, I give that decision limited weight in relation to my determination of this appeal.
48. The scheme would offer some economic uplift during construction and from the contributions of future occupiers. Socially, the proposal would make a modest contribution to the supply of housing, albeit in a context where the Council can demonstrate a 5-year HLS. Future occupiers would provide some support for local services. The proposal would involve a re-use of previously developed land, as encouraged by SWDP policies SWDP 2, part G, SWDP 13 and

¹⁷ APP/P0240/W/17/3176444

¹⁸ Referenced in footnote 12

paragraphs 17 and 111 of the Framework. All those aspects weigh in favour of the appeal but, whilst of value, some of those benefits would be relatively limited given the size of the scheme.

49. However, I have also found that journeys to access local services in Malvern are more likely to be by private motor car than on foot. That would not support the health aspect of the social dimension to sustainable development, referred to in paragraph 7 of the Framework. Environmentally, the use of private transport would also fail to minimise pollution or mitigate or adapt to climate change. There would be material harm to the natural environment because of the adverse effect on the character and appearance of the countryside.
50. It is not unusual for some tension to be found between different policies in a development plan, when applied to a specific proposal. Although there would be compliance with limited aspects of the SWDP, such as the encouragement of the use of previously developed land, I have found conflict with significant policies relating to the safeguarding of the countryside, directing development to locations which minimise demand for travel and offering sustainable travel choices.
51. Consequently, I have found that the proposal would conflict with the development plan read as whole. There are no material considerations of sufficient weight to indicate that the decision should be made other than in accordance with the development.
52. Therefore, for the reasons given above, and having regard to all other matters raised, I conclude that the appeal should be dismissed.

JP Tudor

INSPECTOR