

Appeal Decision

Hearing held on 17 July 2018

Site visit made on 17 July 2018

by Andrew Owen BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th August 2018

Appeal Ref: APP/J1860/W/17/3192152

Land off Moseley Road, Hallow, Worcestershire

- 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 S Watkins of Braemar Midlands Ltd against the decision of Malvern Hills District Council.
 - The application Ref 15/01543/OUT, dated 21 October 2015, was refused by notice dated 29 June 2017.
 - The development proposed was originally described as the development of up to 76 new homes.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. During the Council's determination of the application, the proposal was changed to the erection of up to 38 dwellings and associated infrastructure with new access off Oakleigh Heath. This is the description used on the Council's decision notice, the appeal form and is reflected in the latest drawings. I have therefore considered the appeal on this basis.
3. The application was submitted in outline form with all matters except access reserved for future consideration. I have determined the appeal on the same basis and so give limited weight to the indicative layouts of the site shown on the plans and the indicative cross section of the proposal.
4. It was agreed at the Hearing that some of the obligations in the submitted unilateral undertaking could be dealt with by the Council's Community Infrastructure Levy (CIL) regime. As such an amended undertaking was provided after the Hearing closed which included only those obligations that could not be secured by a CIL payment.
5. Shortly after the close of the Hearing, the government issued a revised National Planning Policy Framework (the 'Framework'). Both parties were given an opportunity to comment on the relevance of the revised Framework to the proposal, and I have taken their comments into account.

Main Issues

6. The main issues are:

- a. whether the site would be a suitable location for the proposal having regard to development plan policy and the Framework;
- b. the effect of the loss of Best and Most Versatile agricultural land;
- c. the effect of the development on the character and appearance of the area; and
- d. whether it is necessary to provide contributions through a planning obligation and if so whether an appropriate mechanism for securing these has been provided.

Reasons

Location

7. Policy SWDP 2 of the South Worcestershire Development Plan (SWDP) identifies that land beyond any development boundary is open countryside, and that such land should be safeguarded by limiting development in it. It is not disputed between the parties that the appeal site is located outside the settlement boundary of Hallow and that the proposal fails to comply with this Policy.
8. In view of the fact that the Council can demonstrate in excess of a five years supply of housing, I consider policy SWDP 2 to be up to date. Indeed, by supporting housebuilding in appropriate areas and by protecting the countryside, I do not consider the Policy is inconsistent with the Framework. Furthermore, contrary to the appellant's suggestion, the cost/benefit balancing exercise is not a matter for SWDP 2 to address, but is for the decision maker to assess based on the proposal's degree of consistency with the development plan as a whole, and any other material considerations. As such I have no reason to give Policy SWDP 2 anything less than very significant weight.
9. I recognise that the housing supply figures are targets not ceilings and there is no national or local policy that precludes housebuilding in excess of the targets. Nonetheless, this does not materially affect the weight I give to the proposal's conflict with this policy.
10. Hallow is a category 1 village and SWDP 2 advises that such settlements provide a wide range of local services and facilities. It is therefore suited to accommodate some market and affordable housing within its boundary to support these amenities. As the appeal site adjoins the settlement boundary, the access to local services and facilities from the development would be broadly comparable to properties within the settlement boundary and so it would provide some support to these amenities. However I strongly agree with the Inspector who examined the SWDP, in that one of the purposes of development boundaries is to provide certainty so that users of the plan can understand what is likely to be permissible.
11. The fact that the site is adjacent to the settlement means that it is not isolated, as set out in paragraph 79 of the Framework, but this does not positively support the proposal and instead is a neutral factor. Nor does it mean its open, rural character is diminished. I also do not consider the site could be

considered to be infill as, though it would be bordered on two sides by dwellings, it would be perceived as being an addition onto the end of Oakleigh Heath which, at present, terminates at the edge of the settlement. Notwithstanding this, Policy SWDP 2 only allows for infill developments within the settlement boundary.

12. Accordingly, I consider the site is not an appropriate location for the development having regard to local and national policy. It would therefore fail to accord with Policy SWDP 2 and the Framework.

Agricultural land

13. Policy SWDP 13 of the SWDP states that Best and Most Versatile (BMV) agricultural land is a strategic asset and that where development would result in the loss of more than two hectares of BMV land, it must be demonstrated that the development cannot be sited on non-BMV land. The explanation to the policy provides some justification for the two hectare threshold.
14. At the Hearing I heard that the main part of the site is two hectares. 30% of this is Grade 2 with the other 70% grade 3b, but both grades are BMV. The area devoted to the surface water balancing pond adds a further 0.4 hectares. Though I accept the pond, when containing water, may be of use to nearby agricultural uses, at such times it would prevent the land from being used for grazing or arable uses. Even when dry it would prevent the land being used for crops, hence detracting from its versatility. As such I consider the amount of BMV land lost as a result of the development would exceed two hectares.
15. No specific assessment of other sites nearby has been undertaken. The appellant advises that much of the local area is BMV land and therefore it is unreasonable to require all development to be on non-BMV land. However, I have no empirical evidence to support this.
16. The Policy also advises that it must be demonstrated that the benefits of the development outweigh the loss of BMV agricultural land. This is addressed in the planning balance section below.
17. I accept the site is not a large field in the context of others nearby. However it has good accessibility from the main road and I have no substantive evidence to suggest the land is not suited to modern agricultural processes and hence it does not contribute valuably to the wider strategic asset.
18. Consequently, the proposal would result in the unacceptable loss of a significant amount of agricultural land. It would therefore fail to accord with this part of Policy SWDP 13 which aims to protect the most productive agricultural land, and paragraph 170 of the Framework which requires the benefits of BMV to be recognised.

Character and appearance

19. The main area of disagreement is the effect on views from Moseley Road. From my site visit I anticipate that the development would be visible from a stretch of Moseley Road around 100 metres in length from a point roughly in front of a property called The Haven down the hill to a point in front of Flatten Bank Cottage. The view currently from here towards Hallow is predominantly of rising fields, and hedgerows with occasional trees. The spires at the church and at the school, and some of the roofs of the properties in Oakleigh Heath,

are visible. However the spires are beyond the crest of the hill on the distant horizon, and the bungalows in Oakleigh Heath are relatively small in scale. As such these features do not contribute significantly to the immediate landscape.

20. The development would change this rural view, bringing the edge of the settlement much closer to this view point. However there would still be a large field between this part of Moseley Road and the site. The indicative drawings show two storey properties would be provided but, as appearance is a reserved matter, this would not necessarily be the case. If bungalows were provided and screened with the suggested landscaping, which would also be assessed at the reserved matters stage, the view towards Hallow in the long term would remain generally similar to that presently. From further south along Moseley Road, closer to the site, views of the development would be largely obscured by the vegetation which flanks the highway.
21. Although I acknowledge the character and appearance of the area would change, I do not consider the change would be unacceptably harmful. The development would therefore accord with policies SWDP 21 and SWDP 25 of the SWDP which require development to integrate with the character of its surroundings.

Planning obligations

22. The amended unilateral undertaking includes an obligation which aims to ensure that 50% of the dwellings would be affordable and provided on site alongside the market homes. It is necessary for the obligation to meet the tests in Regulation 122(2) of the CIL regulations and I consider it does this by being necessary, directly related to the development and reasonably related in scale and kind to the development. It therefore complies with Policy SWDP 15 of the SWDP and paragraph 56 of the Framework, and I am able to take this obligation into account.
23. The provision of 19 affordable homes, which is in excess of the 40% required by Policy SWDP 15, is a considerable benefit. The weight to be given to the affordable housing contribution was debated at the Hearing. Though I recognise figures provided by the Council's Affordable Housing development officer to the appellant shows there is a need for affordable housing in Hallow, it is likely that the existing developments under construction in the village would go a considerable way to addressing this specific need. Furthermore, in the wider context, the Council demonstrated that the volume of affordable units being built is generally in line with their targets for such homes over the plan period. Therefore I consider there is no acute shortage of affordable housing locally, comparable to that suggested by the Inspector into the Pulley Lane appeals¹, that would further increase the weight I give to the provision of affordable homes in this development.
24. The undertaking also includes an obligation to provide a contribution of, in total, £27,200 to various items of local highway infrastructure. Such a contribution aims to mitigate only the effect of the development on existing infrastructure and so cannot weigh in favour of the proposal. Consequently, due to my conclusions below, it is not necessary for me to give this particular obligation any further consideration.

¹ APP/H1840/A/13/2199085 & APP/H1840/A/13/2199426

Planning Balance and Conclusions

25. In weighing up the proposal's failure to accord with Policy SWDP 2, my attention has been drawn by both parties to a number of appeal decisions relating to development beyond settlement boundaries. In particular, the appellant refers to appeal decisions relating to sites in Alrewas² and Redcar³ which were both recovered by the Secretary of State. The Redcar decision was made against a housing supply position of 3.6 to 4 years and therefore limited weight was given to the conflict with the relevant settlement boundary policy, so is not comparable to the appeal before me. In the Alrewas case the housing supply was marginally 5 years, however the decision refers to a Policy Alr4 which, the Inspector considered, questioned the permanence of the settlement boundary. There is nothing to suggest the settlement boundary of Hallow is not permanent, and therefore I cannot conclude that this case is comparable to that before me either.
26. In addition, and with regard to balancing affordable housing provision against the contrast with SWDP 2, the appellant directed me towards an appeal decision relating to development outside, but adjacent to, the settlement boundary of Tenbury Wells⁴. The Inspector there considered that the benefit of 48 homes, of which 19 would be affordable, outweighed the conflict with Policy SWDP 2. Conversely the Council pointed to an appeal decision relating to a site outside the settlement boundary of Badsey⁵ where the Inspector considered that the benefit of 60 units, of which 30 would be affordable, did not outweigh the conflict with Policy SWDP 2. In both cases there were no other factors which weighed against the proposals. In the appeal before me the loss of BMV land weighs significantly against the development, so contrasts with these cases.
27. I recognise there would be economic benefits from the development, including during the construction phase and, in the longer term, to the local community. I give these factors moderate weight. Any environmental benefits resulting from new planting would, in my view, be outweighed by the loss of BMV land.
28. The lack of demonstrable harm to archaeology, ecology, drainage, flood risk, trees and highway safety are neutral factors, as is the obligation to provide contributions to highway infrastructure and the CIL payments.
29. In summary, the proposal would contrast starkly with Policy SWDP 2 and would result in the loss of a significant amount of BMV agricultural land. I give both these matters substantial weight. Balanced against this are the considerable social benefits of additional market and affordable housing and the moderate economic benefits. I conclude that the harms of the scheme outweigh the benefits and that the proposal, overall, would conflict with the development plan. Therefore, for the reasons given above, and taking account of all other considerations, I conclude that the appeal should be dismissed.

Andrew Owen

INSPECTOR

² Ref APP/K3415/A/14/2225799

³ Ref APP/V0728/W/15/3134502

⁴ Ref APP/J1860/W/17/3177254

⁵ Ref APP/H1840/W/17/3192134

APPEARANCES

FOR THE APPELLANT

Simon Atha BSc (Hons) MA MRTPI Cerda Planning

Ben Wright BA (Hons) Dip LA CMLI Aspect Landscape Planning Ltd

FOR THE LOCAL PLANNING AUTHORITY

Dean Kinsella Area Planning Officer

Duncan Rudge Planning Services Manager

Rosie Murray Senior Planning Policy Officer

INTERESTED PERSONS

Paul Hayes Hallow Parish Council

Dean Clarke District Councillor for Hallow ward

Bob Watkins MRTPI Representing a number of neighbours

Anne Stark Neighbour

Margaret Rose Neighbour

James Rose Neighbour

John Marson Neighbour

DOCUMENTS SUBMITTED AT THE HEARING

By the Local Planning Authority:

Policy SWDP 39

Consultation responses on the application from:

- Landscape Officer
- Community Services Officer
- Worcestershire County Highways Officer
- Worcestershire Childrens Services

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Principal Timbered Farmlands, Landscape Type Advice Sheet – Land Management

Principal Timbered Farmlands, Landscape Type Advice Sheet – Planning and Development