The Planning Inspectorate

Appeal Decision

Site visit made on 9 October 2018

by Stuart Willis BA Hons MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25th October 2018

Appeal Ref: APP/J1860/W/18/3205055
Bell Acre, Druggers End Lane, Castlemorton, MALVERN WR13 6JD

- 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 Browning against the decision of Malvern Hills District Council.
- The application Ref 18/00319/OUT, dated 28 February 2018, was refused by notice dated 31 May 2018.
- The development proposed is the erection of 2 dwellings.

Decision

1. The appeal is dismissed.

Procedural Matters

2. Following the refusal of the application the new National Planning Policy Framework (Framework) has been published. Parties will have been aware of the change and have had the opportunity to make comment on it in their appeal submissions and therefore there has been no injustice to them. Other than changes to paragraph numbers there have been no fundamental changes to national planning policy relevant to the main issues in this appeal, which I have determined having regard to the revised Framework.

3. Outline planning permission is sought with all matters reserved except for access. I have had regard to the details provided in relation to access on the Site Layout Proposed plan (NEST 20198/02 rev E) but have regarded all other elements as illustrative. I have determined the appeal on this basis.

4. I have omitted wording that is not a description of development from the proposed development in the banner heading above.

Main Issues

5. The main issues of the appeal are;

   - whether the proposed development would provide a suitable site for housing, having regard to proximity to services and reliance on motor vehicles, and

   - the effect of the proposal on the character and appearance of the area, including the scenic beauty of the nearby Malvern Hills Area of Outstanding Natural Beauty (AONB).

Reasons

Location of Proposed Development

6. The appeal site is a parcel of land located among fields and includes a stable building. It does not sit within a group or cluster of buildings. There is a road to one side of the site with fields located to the other boundaries. The surrounding fields are largely undeveloped with any built form nearby generally being that of agricultural style buildings, farmsteads and occasional residential properties. There is a more concentrated cluster of development near the school and church in Castlemorton, separated from the site by a number of agricultural fields. There is landscaping to parts of the boundary of the site including along the roadside. There is a public right of way (PROW) leading from the road adjacent to the site, crossing the site and continuing beyond. Along the PROW and from the access to the site there are open views across the surrounding fields and to the hills beyond including the AONB.

7. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that applications for planning permission, and therefore appeals, must be determined in accordance with the development plan, unless material considerations indicate otherwise. The South Worcestershire Development Plan (the Plan) has been tested through the examination process. The examining Inspector to the Plan found the Plan's settlement hierarchy to be robustly evidenced-based, including the approach to settlement limits and policies for development in the countryside, and that consequently it was in accordance with the Framework at the time of adoption.

8. I acknowledge the appeal cases and judgements the Appellant has drawn my attention to and comment on these in more detail later. While these are material considerations and have provided clarity over certain terms and definitions within policy, they do not in themselves result in the Plan being out of date or inconsistent with the Framework. The Framework states that a Council's policies for the supply of housing should not be considered up to date if a 5 year supply of deliverable housing land cannot be demonstrated. The Council have indicated they have a 5 year housing land supply and this has not been disputed. I consider the relevant policies of the development plan are not out of date, absent or silent in regard to housing.

9. The classification of Castlemorton in the Plan and the method of categorisation are questioned by the Appellant. A Freedom of Information response regarding this has been referred to by the Appellant. However, I have not been provided with a copy of this. The Appellant considers the site is within the settlement of Castlemorton. While being a Category 4A settlement in the Plan, it has no settlement boundary. Being outside of any settlement boundary, policy SWDP2 defines it as being in the open countryside, where new housing development is strictly controlled. Development in the open countryside is only considered appropriate if supported by other relevant local polices or meeting one of the criteria listed.

10. The Plan states that in lower category settlements, such as Castlemorton, development is restricted to infilling and other limited exceptions. Given the location of the site, in the context of the surrounding land and development, I consider it does not constitute infill development. There is also no evidence presented to indicate the proposal falls within any of the other exceptions referred to in the Plan.

11. Paragraph 55 of the original Framework is included in the Council's reasons for refusal. The Appellant disagrees with the Council's contention that the development would represent isolated homes in the countryside in this context. The general thrust of paragraph 55, which sought to avoid isolated homes in the countryside, has been largely replicated in paragraphs 78 and 79 of the revised Framework. I recognise the Braintree judgement (Braintree District Council v SSCLG & Ors [2017] EWHC 2743 (Admin), along with the subsequent Court of Appeal judgement (Braintree DC v SSCLG, Greyread Ltd & Granville Developments Ltd [2017] EWHC 2743 (Admin); [2018] EWCA Civ 610), and their clarification of the interpretation of "isolated dwellings in the countryside" in the Framework. The judgements highlight the dictionary meaning of "isolated" and go on to identify the difference between homes in a community, village or settlement, in contrast to those in the countryside. The terms "isolated", "community" "village" and "settlement" are not defined in the Framework. As such, an assessment of the immediate context of a site, based on the particular circumstances of the individual case, is required when considering whether or not it is within a community, village or settlement.

12. Other residential properties and buildings are visible from the site. However, rather than being adjacent or in close proximity to it, they are separated from the site by fields. The Appellant indicates that the nearest properties are some 50m from the site and I consider the site to be standing apart and detached from these. I also consider the site not to be within a hamlet, or cluster of dwellings or buildings.

13. The Appellant states that the church and school in Castlemorton are more than 1km walking distance from the site and the centre of the settlement is 950m away. The core of development in Castlemorton is centred around these facilities and, given the distances involved and intervening fields, the site is detached from them. Even beyond this core, any clusters of properties are still separated from the appeal site by fields and are distinctly detached from the site. As such, the site would not be viewed as part of these either. The village hall and nearest public house are located further from the site, the other side of the school and church cluster. Therefore, while without settlement limits, and acknowledging the comments of third parties and the Appellant, I consider the site to be physically separate and remote from any settlement, village or community. Therefore, the proposal would represent isolated homes in the countryside, as described in the Framework, and does not meet any of the exceptions set out in Paragraph 79.

14. Planning Policy Guidance (PPG) recognises that different sustainable transport policies and measures will be required in different communities and, that opportunities to maximise sustainable transport solutions will vary from urban to rural areas. Nevertheless, the Framework and the Plan acknowledge that the planning system should consider travel patterns and their environmental impacts.

15. There are facilities in and around Castlemorton including a church, a primary school, a village hall and pub. Some of these are within guideline walking distances suggested in Manual for Streets. However, for pedestrians to be able to access these facilities they would need to use the surrounding road or PROW network. The roads near the site in the main comprise unlit rural lanes with no footpaths, in some instances where the shape of the road limits forward visibility. Such lanes may be lightly trafficked, however, from my site visit,

which I acknowledge is only a snapshot in time, there were a number of agricultural vehicles passing the site along these lanes. These circumstances do not lend themselves to safe use by pedestrians. The PROW's would similarly be unlit, not frequently hard surfaced and is primarily across fields. This would discourage the likelihood of them being a practical route, in particular at times of darkness and of adverse weather conditions. Similarly these factors would be unlikely to encourage cycling to the services and facilities.

16. While with the distances involved it may be technically possible to access the services and facilities by foot or bicycle, I consider it would be unrealistic and unlikely due to the characteristics of the surrounding road and PROW network. Therefore, occupiers of the dwelling would be heavily reliant on the use of motor vehicles. The proposal is for 2 dwellings and I consider that these would generate more traffic than the use of the site for the keeping of horses.

17. From my visit and the evidence before me I concur with the comments of the Inspector from the previous appeal at the site (APP/J1860/W/15/3130912) that the site is some distance from the facilities in Castlemorton and an even greater distance from those in the larger settlement of Welland. I also note that Castlemorton only has a weekly bus service to Tewksbury and Malvern. As a result the proposal would increase private motor vehicle movements. I recognise that there is generally a greater reliance on the private car in more remote rural areas. Nevertheless, it remains the case that there would be a lack of sustainable transport choices available to enable future residents to conveniently access services and facilities. I consider that planning conditions, such as that suggested regarding the type of vehicle used by the occupants, would not address this issue.

18. My attention has been drawn to appeal reference APP/F1230/W/16/3154493 in this regard. That appeal related to 14 dwellings which, due to the greater number of dwellings, would have a greater impact in sustaining local services and facilities. The Inspector noted that this contribution significantly offset the impacts from the reliance on the private cars in that instance. The Inspector described the site as being "*situated adjacent to the western edge of the built-up part of the village*" and located between existing buildings. This is a different context to the appeal before me. As such, I consider the appeal is not directly comparable with the one before me and give it little weight.

19. I therefore find that the site is not a suitable site for housing, having regard to proximity to services and reliance on motor vehicles. As such the proposal would be contrary to policy SWDP 1, SWDP 2 and SWDP 4A of the Plan and paragraph 79 of the Framework. The development would represent isolated dwellings in the open countryside and does not meet any of the exceptions where this form of development is permitted. It would be contrary to the policy aims to ensure development is appropriately located, to minimise demand for travel and to offer genuinely sustainable travel choices.

Character and Appearance

20. The site is not subject to any formal designations, but lies in the countryside with views towards the Malvern Hills AONB. No visual impact study has been provided by any parties and the Appellant contends the land is not of high value and that the proposal would not impact on the AONB. I observed that the appeal site forms part of a network of fields with the AONB as a prominent backdrop to views from the PROW and the access to the site. The appeal site is

seen as part of the countryside, visually divorced from any group or cluster of buildings. There are open views across the site and the surrounding area which can be appreciated from a number of public vantage points, despite the presence of some boundary vegetation. These views are attractive, providing visual links to the wider countryside, and the site contributes to the rural setting and character of the locality.

21. Development in the wider area is dispersed, rather than ribbon, with the built form generally being that of agricultural style buildings or occasional dwellings. The site includes a stable building and some minor structures. Nevertheless, it is primarily undeveloped and open. While there are other properties and buildings in the area, the appeal site would be visually separated from them. It would, therefore, be viewed as part of the open countryside. Although the pattern is of dispersed development, rather than a common sense addition, the appeal proposal would be incongruous with the appearance of the site at present and harmful to the area. It would diminish the contribution the site makes to the open nature of the area, which is an important feature, by introducing residential development.

22. I acknowledge that the proposal is in outline form with all matters reserved except access. Nonetheless, the proposed development would, by introducing additional built-form into a largely open field, significantly alter its character. The open nature of the site makes a positive contribution to the character and appearance of the area. The construction of 2 dwellings would reduce and unacceptably damage the largely undeveloped qualities of the site. The proposal would result in the site having a residential appearance given the need for driveways, parking and the domestic paraphernalia that would be associated with the curtilage and this would be inherently harmful. The access, turning and parking facilities would be particularly prominent from the access of the site and along the initial part of the PROW.

23. I recognise that matters of landscaping and layout are reserved. The current views from the access and PROW at the site of open countryside, including the hills within the AONB would be partially disrupted or obstructed by the development. Without landscaping the open nature of the site would result in the development being plainly visible. The indicative information suggests that to screen the properties the landscaping would create separate enclosed areas within the field. This would have visual consequences and not be in keeping with the largely open fields and views. Any new planting would take time to mature and would therefore not effectively screen the site for some time. A planning condition to secure a landscape scheme has been suggested. Nevertheless, while I acknowledge such conditions can be appropriate in certain instances, they should not be used to try to hide development which is inherently unacceptable. I consider that, despite the presence of other residential development in the wider area, rather than enhancing the experience of users of the PROW, the change would be substantially adverse and affect the enjoyment of users of it.

24. The Appellant has questioned the relevance of certain polices referred to by the Council given that certain matters are reserved. However, the policies included in the decision notice relate, in part, to development integrating with its surroundings and being appropriate to the character of the landscape. Therefore the policies referred to are, in my view relevant.

25. The proposal would have a significant harmful effect on the character and appearance of the area and the scenic beauty of the nearby Malvern Hills AONB. The proposed development would conflict with policies SWDP 21 and SWDP 25 of the Plan and the Worcestershire County Council Landscape Character Assessment, insofar as they seek to ensure development integrates effectively with its surroundings and that they are appropriate to the character of the landscape setting. The development would be contrary to the Plan policies and to paragraph 170 of the revised Framework which reflects elements of paragraphs 17 and 109 of the previous version. These seek to ensure development contributes to and enhances the natural and local environment, recognising the intrinsic character and beauty of the countryside.

Other Matters

26. A further appeal (APP/Y0435/W/17/3178790) has been referenced in relation to previously developed land by the Appellant. That appeal site included a stable building, hardstanding and ménage with associated paddock used for grazing horses. I note that the appeal referenced was adjoining a settlement boundary and was for 14 dwellings, providing greater support for local services when carrying out the planning balance and would not be directly comparable to the current appeal. Therefore I afford it limited weight.

27. The appeal site has a stable on it. However, this is along with a portion of the field near to it is fenced off from the reminder of the field. Even if the whole of the appeal site were previously developed land there are other considerations that need to be satisfied as part of an overall balance of policy which aims to protect the countryside and ensure development is located appropriately. Therefore, while the proposal may align with elements of national and local policy I have found harm in relation to the main issues. This harm is not outweighed by any benefits associated with the use of previously developed land in this instance, if the appeal site were considered to be as such.

28. While contributing towards housing supply, being for 2 properties, the proposal would only make a modest contribution. Furthermore, economic benefits associated with the construction of the site and the occupation of the dwellings, including support local services would also be limited given the scale of the proposal. Environmental benefits are acknowledged but would also not be significant given the size of the site. Although these matters weigh in favour of the development, there would, however, be negative impacts arising from the proposal. This is in terms of the use of natural resources and the accessibility of local services, along with the character and appearance of the area. I consider that the benefits of the proposal do not outweigh the conflict with the development plan polices, which I consider not to be out of date.

29. I note the level of public comments and those from other consultees. Nonetheless, a lack of opposition or support for a proposal in itself is not a ground for refusing or granting planning permission unless founded upon valid planning reasons. That no concerns have been raised by the Council over other considerations is a matter of neutral weight and does not weigh in favour of the proposal. The proposal, while not preventing development occurring at locations the Plan policies seek to focus on, would go against the aims of those looking to prevent residential development in the open countryside outside the exceptions they identify.

30. The approach of the Council in their handling of the application was referred to however I have dealt with the appeal on its planning merits.

Conclusion

31. For the reasons set out above, the proposal conflicts with the development plan when considered as a whole and there are no materials considerations, either individually or in combination, that outweighs the identified harm and associated development plan conflict. I therefore conclude that the appeal is dismissed.

Stuart Willis

INSPECTOR