
Appeal Decision

Site visit made on 12 March 2019

by Helen O'Connor LLB MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 March 2019

Appeal Ref: APP/H1840/W/18/3218524

Middleton Cottage, Copcut Lane, Salwarpe WR9 7JB

- 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 Messrs Taylor and Price of Belbroughton Developments Ltd against the decision of Wychavon District Council.
 - The application Ref 18/00348/FUL, dated 16 February 2018, was refused by notice dated 24 September 2018.
 - The development proposed is the erection of 1 additional dwelling (Plot 5) to planning permission (Ref. No 17/01722/FUL) revising scheme total from 4 to 5 dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 1 additional dwelling (Plot 5) to planning permission (Ref. No 17/01722/FUL) revising scheme total from 4 to 5 dwellings at Middleton Cottage, Copcut Lane, Salwarpe WR9 7JB, in accordance with the terms of the application, Ref 18/00348/FUL, dated 16 February 2018, subject to the following conditions set out in the attached schedule to this decision.

Main Issues

2. The main issues are whether the site is in a suitable location for housing having regard to the development strategy of the area, and the impact of the proposal on the character and appearance of the area.

Reasons

Location of the site

3. The appeal is located to the south west of Droitwich, north of Copcut Lane and directly adjacent to an allocated mixed-use urban extension to the town, that is currently under construction. Furthermore, the appeal site itself forms part of a site that has planning permission for four detached dwellings, that are nearing completion.
4. The development plan for the area includes the South Worcestershire Development Plan, February 2016 (SWDP). Policy SWDP1 of the SWDP seeks to ensure that development follows the broad presumption in favour of sustainable development as set out in the National Planning Policy Framework (the Framework). Policy SWDP2 sets out a development strategy and settlement hierarchy for South Worcestershire within which Droitwich is identified as a second tier "main town". The appeal site is not located within

the defined settlement boundary for Droitwich. As a consequence, for planning policy purposes the appeal site lies within the open countryside where new development is strictly controlled by policy SWDP2.

5. The appellants have not suggested that the proposal accords with any of the exceptions expressed in this policy and as a result the location of the additional house would be contrary to policy SWDP2. Although the appellants are of the view that the site is likely to be incorporated within the development boundary in future versions of the development plan, the review of the South Worcestershire Development Plan is at an early stage, and as such there is limited evidence to support this. Accordingly, as the site lies outside the development boundary it would conflict with Policy SWDP2 of the SWDP.

Character and appearance

6. The appeal site is a rectangular plot situated within the proposed garden of a dwelling recently permitted as part of a development for four detached dwellings. Adjacent to the north and west of the appeal site further new residential development is under construction as part of a significant urban extension to Droitwich, that includes 740 dwellings. This contrasts with the agricultural landscape of fields of pasture bounded by hedges located on the opposite side of Copcut Lane. Accordingly, the character of the appeal site itself, and the area immediately surrounding it, is under-going significant change such that it is more sub-urban in appearance rather than sharing the attributes of the countryside further to the south.
7. The proposal would introduce an additional detached dwelling that although smaller than the four previously permitted, has a footprint of similar depth and uses bay windows and gable features in similar materials such that it would represent a coherent addition to the group.
8. The Council has indicated that the proposal would conflict with policy SWDP25 of the SWDP which seeks to protect landscape character, although neither party has provided substantive evidence in relation to the latest Landscape Character Assessment as advocated by that policy. Accordingly, it is not fully explained how the proposal would compromise the character of the surrounding landscape to any material degree given the significant change the area is already undergoing as a result of wider development. As the proposed plot would be surrounded by approved residential development, it would not have an impact on wider open views, but would be read against, and within, this context.
9. The Council has referred to the ample grounds of properties in Copcut Lane, however they also refer to the size of gardens in the major residential development approved directly to the west of the appeal site. The Council asserts that the additional dwelling would result in a sub-division of the garden at odds with these surroundings. However, the layout for the adjacent residential development also includes a number of dwellings to the north of the appeal site with similar sized or smaller gardens than the proposed development. Within this varying context the appeal proposal would take a middle course and as such would reasonably integrate with the immediate surrounding grain of development. Furthermore, the amount of garden space attributed to the proposed dwelling and Plot 1A, would provide sufficient space for outside seating and play in line with the advice in the South Worcestershire Design Guide Supplementary Planning Document, March 2018.

10. I have had regard to the Council's view that the proposal appears to be shoe-horned into the existing layout for four dwellings. However, based on the evidence provided it seems that the original layout resulted in part from the retention of certain trees, and particularly a Category A Ash tree on the appeal site, leading to a particularly generous plot for Plot 1A. However, when I visited the site I noted that this tree has since been removed. Whilst the circumstances that led to this are not entirely clear, the evidence submitted does not indicate that the retention of the Ash tree was secured as part of the original scheme for four houses either through a Tree Preservation Order or a condition. Moreover, the Council has not raised the presence, or loss, of trees as part of their case in relation to the impact on the character and appearance of the area. In the absence of the Ash tree there would be sufficient room to accommodate a further dwelling.
11. Both parties have referred to an appeal¹ at Hill Top Farm, Newland Lane which proposed a dwelling at a site adjacent to a different urban extension. The Inspector in that case found that the site was accessible in relation to Droitwich but went on to find that the site retained a predominantly rural character that would be harmed by the development proposed. In this respect the circumstances differ materially from the appeal proposal before me. The current appeal site forms part of a previously consented residential plot and would not result in the incursion into open undeveloped land. It therefore carries limited weight in assessing the character and appearance of the present scheme, which in any event, I have assessed on its own merits.
12. Accordingly, I find that the proposal would not harm the character and appearance of the surrounding area and would therefore accord with policy SWDP21 of the SWDP which sets out criteria to achieve a high quality of design. In addition, there is no conflict with policy SWDP25 of the SWDP that seeks to protect the landscape character of South Worcestershire.

Other matters

13. The Council considers the proposal would, when taken together with the other four consented dwellings, be heavily skewed towards the provision of larger market homes contrary to the objective in policy SWDP14 in the SWDP to provide for a mix of housing. Be that as it may, the existing consent for four detached larger houses means that it is only the additional house at plot 5 that would be able to provide a greater mix. It is slightly smaller than the other four. Furthermore, in the context of the adjacent urban extension including 740 dwellings, the contribution of one additional four-bedroom dwelling is unlikely to materially undermine the balance and mix of housing units provided in the area overall.
14. Some concerns have been expressed in relation to the impact of the proposal on the living conditions of the future occupants of the 4 dwellings that already have consent. The detached proposal is sited a sufficient distance from plots 1A and 3A such that it will not materially affect levels of light to those dwellings. Furthermore, although the dwelling would increase overlooking to the rear garden of plot 3A, the distance and intervening detached garage will prevent this from amounting to an unreasonable intrusion into the privacy for those occupants.

¹ Reference APP/H1840/W/18/3197386

15. Concerns have been expressed by Hindlip, Martin Hussingtree and Salwarpe Parish Council that land nearby is liable to flood, regarding drainage and that the increase in the use of the access on to Copcut Lane would pose a threat to highway safety. However, these are not matters that the Council or its respective statutory consultees have raised and there is limited evidence to demonstrate any harm. As such, I give them limited weight.
16. The Parish Council further refer to the loss of trees on the site. However, as already referred to above, based on the evidence provided, the outcome of this appeal would not materially alter the loss of trees that has already occurred on the site. I therefore would concur with the Council that this is a matter that can be adequately covered by a landscaping condition. In addition, the collection of outstanding Community Infrastructure Levy receipts is not a matter that I can take into account in the assessment of the merits of the current appeal proposal.
17. The appellants have made reference to the impact of the adjacent urban extension on the value of the appeal site, although they have not provided specific viability evidence nor suggested that the existing consent for four dwellings has been rendered unviable. On this basis, this limits the weight I can give to this matter.

Planning balance and overall conclusion

18. 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, and this is further reflected in the wording of policy SWDP1 of the SWDP.
19. There is no dispute between the parties that the Council is able to demonstrate a five year supply of housing land and as such the relevant policies of the development plan are afforded full weight. Therefore, the tilted balance in paragraph 11d of the Framework is not engaged. Moreover, I have had regard to caselaw² and recent appeal decisions³ highlighted by the Council that confirm that where a local planning authority has an up-to-date development plan with which the proposal does not comply, the presumption in favour of sustainable development will not apply, and the starting point is not neutral but is adverse to the grant of planning permission.
20. Nevertheless, the case law is equally clear that there remains scope for limited discretion outside of the process set out in paragraph 11 of the Framework. Therefore, notwithstanding that the conflict with policy SWDP2 in relation to the location of the development attracts significant weight against the proposal, I am still required to apply the planning balance of the particular circumstances of the appeal development, in order to consider whether material circumstances indicate otherwise.
21. Policy SWDP2 has underlying objectives regarding accessibility that supports directing new development to the urban areas and main towns. Droitwich is identified as a main town with a comprehensive range of local services, employment opportunities and a choice of means of travel in addition to the private car. The proximity of the appeal site to Droitwich means that,

² East Staffordshire Borough Council v SSCLG & Barwood Strategic Land II LLP [2016] EWHC 2973 (Admin)

³ Referenced APP/H1840/W/17/3179864, APP/J1860/W/17/3181534 & APP/H1840/W/18/3204389

notwithstanding the comments of the parish council, although located outside of the settlement boundary, the proposed dwelling would benefit from linkages into the adjacent site with good accessibility to nearby facilities and transport choices, and this counts in its favour.

22. Furthermore, Policy SWDP2 identifies the high quality of the open countryside as a further reason as to why residential development outside of the defined settlement boundaries should be strictly controlled. However, the circumstances of this case are that the proposal would be surrounded by new residential development due to a combination of the adjacent mixed-use allocation in the development plan, together with the planning history for the appeal site itself. As a result, the context of the appeal site is closer to having a sub-urban character than a rural one. Therefore, it does not possess an intrinsic landscape value or natural beauty such that it could be regarded as high quality open countryside. Nor would it conflict with national policy in paragraph 170 of the Framework that seeks to protect the character and beauty of the countryside.
23. The recent planning history of the appeal site itself attracts significant weight as a material consideration given that the location has already been established as one where residential development can proceed. Notwithstanding that there have been material changes to planning policy since the grant of permission for four dwellings, the extant permission currently being built on site is of direct relevance to this proposal. An additional dwelling would result in the more efficient use of land that would, irrespective of the appeal proposal, provide for new residential development. The Framework advises that planning decisions should promote an effective use of land in meeting the need for homes. Moreover, as the site comprises part of a residential garden it would fall within the definition of previously developed land in the Framework, the reuse of which attracts substantial weight in favour of the proposal.
24. I have had regard to an appeal decision at Far Oaks, Furlongs, Copcut Lane⁴ which related to an additional dwelling at a site near to the appeal proposal. However, in that case there was no extant planning permission for residential development in evidence, and therefore, the material considerations, and the weight given to them, were materially different to the circumstances before me. Even so, my approach accords with that Inspector in relation to the significant adverse weight given to the conflict with policy SWDP2.
25. In addition, the proposed development would not conflict with the national policy in relation to rural housing, and the advice in paragraph 79 of the Framework in particular, as evidently the proposal would not result in an isolated new dwelling. The location of the site outside of the settlement boundary in these circumstances would not conflict with the underlying rationale for policy SWDP2, nor conflict with the Council's overarching sustainable development principles underpinning policy SWDP1, and on the basis of the evidence before me, I have not identified tangible harm.
26. I have further considered the proposal against the three overarching objectives of sustainable development, namely economic, social and environmental objectives as identified in paragraph 8 of the Framework. In economic terms it would make a modest contribution towards housing supply

⁴ Reference APP/H1840/W/17/3183313

that would support the Government's objective of boosting the supply of homes as set out in paragraph 59 of the Framework. Furthermore, the proposal would support a local house-builder and provide a limited amount of local employment through construction. 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. With regards to the environmental dimension the proposal would integrate with the surrounding modern residential development such that it would not cause harm to the character and appearance of the area. However, given the modest scale of the proposal these are factors that would attract moderate weight, and in the absence of other material considerations would not have been sufficient to outweigh the conflict with the development plan policy.

27. The Council have pointed out the importance of the plan-led system in the consistency of decision making, such that cumulatively the strategic intent of the development plan is maintained. I accept that this is a matter of considerable importance, but it does not preclude the use of discretion in exceptional cases when material considerations indicate otherwise. I have considered this case on its own merits and would surmise that the individual circumstances of this case, whereby a site with a recent, and extant residential consent is located directly adjacent to an urban extension to a main town, is unlikely to recur with such frequency that it would be likely to prejudice the effectiveness of the Council's development plan strategy for housing.
28. Taking all the above matters into account, I consider that in relation to the circumstances of this case these constitute exceptional material considerations of sufficient weight to outweigh the harm caused by the conflict with policy SWDP2 of the development plan.

Conditions

29. The Council has suggested 9 conditions. In addition to the standard time limit for commencement of development, I agree it is necessary to have a condition specifying approved drawings to provide certainty.
30. A condition is also included to ensure that the proposal accords with the sustainable urban drainage principles and lower rates of foul water set out in the submitted water management strategy.
31. Although the Council has suggested that it is necessary to specify the landscaping and boundary treatments, this is shown in relation to Plot 5 on the landscaping scheme on drawing number 17-30-500A. Apple tree planting and a native tree screen planting mix is shown in addition to some close board fencing. The Council has not indicated that these details are inadequate or unacceptable, and in these circumstances, it is therefore only necessary to ensure that the landscaping scheme is implemented, and I have adjusted the condition accordingly. Moreover, the condition suggested in relation to tree protection measures seems unnecessary given that the only two trees identified on Plot 5 in the submitted tree report indicates their removal, and there were no trees present on the appeal site when I conducted my site visit.
32. A condition relating to ecological mitigation and enhancement is included so that the development contributes to the conservation and enhancement of biodiversity in accordance with the Council's planning policies. However, I have

adjusted it to refer to the ecological appraisal and baseline survey submitted as part of the appeal proposal. Furthermore, in light of my observations at my site visit, which are consistent with the findings of the baseline ecological survey in July 2018 that the appeal site consists of bare ground with limited ruderal habitat and as such is of little or no ecological value, it is sufficient that these details are agreed prior to the occupation of the development rather than prior to the commencement of works.

33. I have adjusted the wording of the proposed condition in relation to highway matters to make it more proportionate to the domestic scale of the appeal proposal. It requires the provision and retention of the parking areas shown on the plans for the additional dwelling.
34. Finally, although the Council requested a condition to restrict permitted development rights, national Planning Practice Guidance advises that restricting the future use of permitted development rights will rarely pass the test of necessity and should only be used in exceptional circumstances. In this case, little evidence has been provided to show that exceptional circumstances arise and there is some uncertainty as to which permitted development rights the Council wished to restrict given the reference to the superseded Town and Country Planning (General Permitted Development) Order 1995. On this basis, the suggestion would not pass the necessary tests for planning conditions in national guidance.

Conclusion

35. For the reasons given above I conclude that the appeal should be allowed.

Helen O'Connor

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: Location Map 17-30-501A; P5 Ground Floor Plan 17-30-61; P5 First Floor Plan 17-30-62; P5 Elevations (Sheet 1) 17-30-63; P5 Elevations (Sheet 2) 17-30-64; P5 Garage Floor Plan and Elevations 17-30-71; Scheme Drawing (1) 17-30-500A and Scheme Drawing (2) 17-30-100.
- 3) Prior to the first occupation of the dwelling hereby permitted the details set out in the Water Management Statement (Steve Haskey Design) shall be fully implemented and remain thereafter.
- 4) The planting, seeding and turfing shown on landscaping plan 17-30-500A shall be carried out in the first planting and seeding/turfing seasons following the completion or first occupation of the development, whichever is the sooner. The boundary fencing shown on the plan shall be installed prior to the first occupation of the dwelling hereby permitted. Any trees or plants which, within a period of five years from the completion of the planting, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless otherwise agreed in writing by the local planning authority.
- 5) Prior to the first occupation of the dwelling hereby permitted an ecological mitigation and enhancement scheme shall be drawn up by a suitably qualified ecologist, submitted to and approved in writing by the local planning authority. The scheme shall be based on the recommendations contained within the Ecological Appraisal by Clarke Webb Ecology Ltd dated 15 September 2014, 4 March 2015 and 20th March 2017, and Baseline Ecological Survey dated July 2018 by E McKay and shall include an implementation timetable. The works shall thereafter be carried out in accordance with the approved details and timetable.
- 6) The development hereby permitted shall not be occupied until the parking areas shown on plan 17-30-500A have been provided. Thereafter they shall be retained and kept available for use at all times.