The Planning Inspectorate

Appeal Decision

Site visit made on 4 June 2019

by Stuart Willis BA Hons MSc PGCE MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 June 2019

Appeal Ref: APP/J1860/W/19/3224861
Linden, Beauchamp Lane, Callow End WR2 4UQ

- 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 Mrs M Tearne against the decision of Malvern Hills District Council.
- The application Ref 18/01609/FUL, dated 5 November 2018, was refused by notice dated 10 January 2019.
- The development proposed is construction of 2no. dormer bungalows.

Decision

1. The appeal is dismissed.

Procedural Matter

2. It is indicated that the South Worcestershire Development Plan (Plan) is under review. However, no details of the status of any emerging plan has been provided or copies of any emerging policies. In any event, I have assessed the proposal on the basis of the adopted plan.

Main Issues

3. The main issues of the appeal are;

   - Whether the proposal would be in a suitable location for housing, having regard to local and national planning policies, proximity to services and reliance on motor vehicles;
   - The effect of the proposal on the character and appearance of the area;
   - Whether the proposal would comply with national planning policy which seeks to steer new development away from areas at the highest risk of flooding; and
   - The potential effect of the proposal on biodiversity.

Reasons

Location of Development

4. The appeal site is part of the garden of Linden, located at the end of a row of residential properties off a narrow country lane. There is mature vegetation to the front and along the adjacent public right of way (PROW). Other than the

listed building of Peachy Cottage and the pond opposite the site, the majority of the land around the site are undeveloped fields.

5. 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 Nation Planning Policy Framework (Framework) comments that where a planning application conflicts with an up-to-date development plan, it should not usually be granted. Only if material considerations in a particular case indicate that the plan should not be followed should they be permitted.

6. Policy SWDP1 of the South Worcestershire Development Plan sets out the broad presumption in favour of sustainable development in line with the Framework. Policy SWDP2 of the Plan establishes the settlement hierarchy and development policy that should apply in settlements and the open countryside.

7. The parties indicate that Callow End is classified as a Category 2 settlement in the Hierarchy of Settlements. Policy SWDP2 indicates that housing sites are allocated to address the need for housing and support local services in these settlements. Being outside of any settlement boundary, Policy SWDP2 defines the appeal site 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 plan policies.

8. The proposed development conflicts with the policies of the Plan as it does not meet any of the exceptions where residential development in the open countryside is considered appropriate. While the Plan may be under review, this does not imply it is out of date or inconsistent with the Framework. That the Council have a 5-year supply of housing land has not been contested. I therefore consider the relevant policies of the development plan are not out of date, absent or silent in regard to housing.

9. The provision of a minimum 5 year housing supply is not to be considered as an upper limit and the proposal would align with the national aim to boost the supply of housing and support small scale development. I also note Policy SWDP20 of the Plan and the Framework where they relate to impacts from an aging population and housing being needed for different groups in the community. Nevertheless, while any contribution is worthwhile, the addition of 2 dwellings to the supply and mix of housing in the area would be small even in the context of a lack of progress on other sites in the village.

10. Similarly, the additional custom to existing services and facilities would be limited as would any economic benefits resulting from the construction period, new homes bonus and council tax. Environmental benefits associated with energy efficiency, the potential to minimise pollution, landscaping and habitat enhancements would also be minimal given the size of the site.

11. I note the principles of policy SWDP2 in relation to sustainable development and have taken into account the benefits of the proposal. Nevertheless, even if I were to consider the proposal a more efficient use of brownfield land, and although the scheme would not prevent most development being located in urban areas, it is clear that beyond any development boundary new residential development is limited to certain circumstances in the Plan.

12. The appellant considers that the services and facilities within Callow End would be within a reasonable walking/cycling distance of the site. Notwithstanding this, significant parts of the routes to access these have no footpaths and are along narrow, unlit country lanes. Given these characteristics, the routes would be uninviting to pedestrians and would not encourage cycling to the services and facilities. Bus stops with links to larger settlements such as Worcester have been highlighted. However, in order to access public transport occupants of the proposed dwellings would be required to travel along routes that are often unlit and in part without footways. There have been no concerns regarding the safety of the highway network, and I acknowledge potential for home working. Nonetheless, the routes would not be attractive for users and would be unlikely to encourage the use of public transport, walking or cycling.

13. Consequently, I find that the site is not a suitable location for housing, having regard to planning policies, its proximity to services, and reliance on motor vehicles. As such the proposal would be contrary to policy SWDP1, SWDP2 and SWDP4 of the Plan. Even though the site is not isolated from other residential properties, it is outside of the development boundary and would not meet any of the exceptions listed. Moreover, 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.

14. Furthermore, it would fail to accord with the Framework where it aims to locate development in accessible and convenient locations and promote walking, cycling and public transport use and that the proposal conflicts with an up-to-date development plan and therefore should not usually be granted.

Character and Appearance

15. The scale, appearance and building line of the proposed dwellings would mirror certain nearby properties and use complimentary materials. Furthermore, there are a variety of house types and design in the row and the development would not project further away from the village centre than the existing properties. Nevertheless, even though the low-level rear boundary treatments allow some views into the site, it is well contained and enclosed by the mature vegetation to much of its boundaries.

16. There are open views over the site and the surrounding area above and through the vegetation and the general absence of built form results in it blending into the wider landscape. Consequently, the site is viewed as part of the open countryside, rather than as part of the established residential setting of the adjacent row of properties. This can be appreciated from a number of public vantage points, including from the road to the front and parts of the adjacent PROW. These views are attractive, providing visual links to the wider countryside, and the site contributes to the rural setting and character of the locality.

17. While I acknowledge landscape conditions can be appropriate in certain instances, they should not be used to try to hide development which is inherently unacceptable. Even with supplementary landscaping, the introduction of 2 properties and the associated domestic paraphernalia would result in the site having a residential appearance.

18. While I note the Landscape Character Assessment refers to clusters of dwellings, there is also reference to an agricultural landscape with an open

nature. Therefore, despite the presence of other residential development adjacent the scheme would not harmonise with its surroundings. It would be inherently harmful and diminish the contribution the site makes to the open nature of the area, damaging the largely undeveloped qualities of the site.

19. The Council have not raised any concern in regard to impacts on the setting of the nearby listed building. While there would be inter-visibility between the appeal site and Peachy Cottage, the setting already comprises residential properties of a similar scale and appearance. As such, the scheme would not cause any harm to the setting of this designated heritage asset.

20. Notwithstanding this, the proposal would harm the character and appearance of the area. It would be contrary to Policies SWDP21 and SWDP25 of the Plan, insofar as they seek to ensure development integrates effectively with its surroundings and are appropriate to the character of the landscape setting. Furthermore, it would fail to accord with the Framework where it seeks to ensure development contributes to and enhances the natural and local environment, recognising the intrinsic character and beauty of the countryside.

Flood Risk

21. The Council acknowledge that the flood defences and associated earthworks subject to planning permission 15/01060/FUL have been implemented and I have no reason to disagree. I acknowledge the content of the flood risk assessment (FRA) that accompanied it and that the FRA with the appeal proposal indicates that the floor levels of the dwelling would be set above the crests of the bunds and that of previous flood events at the site. Nevertheless, although the Environment Agency did not comment on the application, it is not disputed that according to their mapping system the appeal site lies within Flood Zone 2. It is therefore at medium flood risk from fluvial flooding.

22. The Framework states that inappropriate development in areas at risk of flooding should be avoided. This is achieved by steering development to the lowest flood risk areas through the application of a sequential test. Consequently, planning applications, such as the appeal proposal, are required to apply a sequential test to establish whether there are other reasonably available sites for the proposed development in areas with a lower probability of flooding. Policy SWDP25 of the Plan also states that other than sites allocated, all development proposals must clearly demonstrate that the sequential test has been applied.

23. I have not been provided with any evidence to demonstrate that the sequential test has taken place and that there are no other suitable alternative sites for the proposed development. On the basis of the information before me, the proposal does not pass the sequential test and there is no need to consider flood risk in this regard any further.

24. The application form stated that surface water would be disposed of via soakaway. Alternative measures for intercepting and discharging roof surface water have also been referred to. Notwithstanding this, and while I note the proposed provision of water efficient items and permeable surfaces, there has been no detailed evidence to demonstrate the feasibility of surface water measures.

25. Therefore, the proposal would not comply with national planning policy which seeks to steer new development away from areas at the highest risk of flooding. The proposal would be contrary to Policies SWDP28 and SWDP29 where they, require the impacts of flood risk to be minimised and clearly demonstrate that a sequential test has been applied. It would also fail to accord with the Framework where it states that development should be steered to areas with the lowest risk of flooding and should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.

Biodiversity

26. The pond adjacent to the appeal site at Linden is said to be relatively newly constructed and is surrounded by garden. It would be retained along with existing landscape features which would be supplemented with additional planting. However, the proposed properties would be located between the pond within the garden of Linden and another pond located across the road from the site. While the terrestrial habitat is not optimal, the presence of an older pond close to the site, and hedgerows at its boundaries, provide a degree of connectivity between the ponds that are located in a rural context. Given these circumstances there is a reasonable likelihood of a protected species being present and affected by the development.

27. The Planning Practice Guidance indicates that an ecological survey will be necessary in advance of a planning application if the type and location of development are such that the impact on biodiversity may be significant and existing information is lacking or inadequate.

28. Without any survey of the relevant features it is simply not known whether protected species are present and, if there are, whether mitigation measures would be appropriate. There is a further question concerning the implementation of any such measures. Given this degree of uncertainty, the use of conditions would not be reasonable in this case.

29. The absence of sufficient information means I cannot rule out potentially significant harm to biodiversity. As such, it would be contrary to SWDP22 of the Plan where it states, in part, that development that would compromise species or habitats will only be permitted if the need for and the benefits of the proposed development outweigh the loss. It would also fail to accord with the Framework where it states that if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for then planning permission should be refused.

Other Matters

30. There are no refusal reasons in relation to considerations such as heritage assets, highway matters, green infrastructure, living conditions or loss of agricultural land. However, the lack of harm from these results in neutral impacts that do not weigh in favour of the development.

31. My attention has been drawn to recent appeal decisions within the areas covered by the SWDP. There are certain similarities between the appeals quoted to me and this one. Nevertheless, there are also elements that make the cases materially different to the one before me with several concerning a different number of dwellings and/or category of village. The appeal at Bush

Lane (APP/J1860/W/17/3176459) is also at Callow End. Nonetheless, that site is considerably closer to services and facilities requiring a far shorter walk than in this appeal. Therefore, it is not directly comparable to the scheme before me. In any event, individual appeals are decided on their own particular merits and I have determined the appeal in this way.

Conclusion

32. Although there are matters that weigh in favour of the development, there would, however, be negative impacts arising from the proposal as identified in the main issues. For the reasons set out above, the scheme conflicts with the development plan when considered as a whole. There are no material considerations, either individually or in combination, that outweighs the identified harm and associated development plan conflict.

33. Therefore, I conclude that the appeal should be dismissed.

Stuart Willis

INSPECTOR