
Appeal Decisions

Site visit made on 28 May 2019

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 07 August 2019

Appeal Ref: APP/J1860/W/19/3224257

Laylocks Cottage, Broadheath Common, Lower Broadheath WR2 6RL

- 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 and Mrs Probert and Mr and Mrs Parkes against the decision of Malvern Hills District Council.
 - The application Ref 18/00928/OUT dated 22 June 2018 was refused by notice dated 24 October 2018.
 - The development proposed is outline application with all matters reserved for the erection of 4 self/custom-build dwellings and 1 affordable bungalow, revised access arrangements off Laylocks Lane and associated works and landscaping.
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Decision

1. The appeal is dismissed.
2. An application for costs was made by Mr and Mrs Probert and Mr and Mrs Parkes against Malvern Hill District Council. This application will be the subject of a separate Decision.

Procedural Matters

3. A revised National Planning Policy Framework (the Framework) was published in February 2019 after the issue of the Council's decision. However, as any policies that are material to this decision have not fundamentally changed in the Framework, I am satisfied that this has not prejudiced any party and I have had regard to the latest version in reaching my decision.
4. The appeal proposal is an outline application for five dwellings with all matters reserved. Whilst access is reserved, the drawings submitted do show access onto Laylocks Lane between Apple Tree Lodge and Laylocks Cottage. Whilst submitted drawings do show access and layout details, I am treating those drawings as indicative only for the purpose of the appeal.

Main Issues

5. The main issues are (i) whether the appeal site is a suitable location for housing having regard to national and local policies (ii) the effect of the proposal on the character and appearance of the area and (iii) the effect of the proposal on the living conditions of the occupiers of Laylocks Cottage and Apple Tree Lodge with regard to vehicle movements.

Reasons

Location

6. The South Worcestershire Development Plan 2016 (SWDP) sets out a hierarchy of development principles for appropriate locations for new housing which seeks to strictly control development in open countryside. Policy SWDP 1 sets out overarching sustainability principles, whilst policy SWDP 2 sets out the development strategy and settlement hierarchy. The intention of SWDP 2 is to focus development on urban areas.
7. The appeal site is outside the settlement boundary of Lower Broadheath. As settlement strategies would have been considered as part of the plan making process in 2016 prior to the adoption of the SWDP, I do not agree with the appellants that the settlement boundaries are out of date. Policy SWDP 2 (C) states that open countryside is defined as land beyond any development boundary. It further clarifies that development in the open countryside will be strictly controlled subject to a number of exceptions. It is agreed by the parties that the proposed development does not fall within those exceptions.
8. The appellants are of the view this is a technical breach of policy and that the appeal site is in a sustainable location. Given its location in relation to other dwellings and having had regard to the Braintree judgement provided by the appellant, I agree that the proposed development would not represent a new isolated home in the countryside which paragraph 79 of the Framework seeks to avoid.
9. However, Paragraph 78 of the Framework in promoting sustainable development in rural areas, states that housing should be located where it will enhance or maintain the vitality of rural communities. The settlement boundary for Lower Broadheath is approximately 1.6km by road. The appellants have referred to available bus services but it provides an hourly peak service and 2 hourly off peak service. With a limited service, it is likely that residents would choose to travel by private car to access most services and facilities to meet their day to day needs. Cycling and walking to facilities may be possible but the nature of the rural lanes which are narrow and unlikely to be lit at night and inclement weather would limit their potential for use as an alternative to private car.
10. I do not therefore consider that the appeal proposal would comply with the overall Framework aim of promoting sustainable transport. It would also not comply with Policy SWDP 2 which seeks to safeguard and wherever possible enhance the open countryside. Accordingly, I conclude that the site is not a suitable location for housing having regard to local and national policies.

Character and Appearance

11. The appeal site is made up of a roughly triangular grassed area to the rear of the existing properties that front onto Laylocks Lane. It also includes a strip of land between Laylocks Cottage and Apple Tree Lodge that is currently used as side access to the two dwellings and is divided by a boundary fence.

12. The prevailing character of the lane is rural with largely detached houses with their own drives to the one side of the land and Broadheath Common opposite. With the exception of the Homestead, the dwellings on this section of the lane have frontages on Laylocks Lane. There are open fields to the east beyond the appeal site with views of Worcester in the distance.
13. The appeal site falls within the Significant Gap between Broadheath and Worcester. Policy SWDP2 (D) states that development proposals should ensure the retention of the open character of the Significant Gaps.
14. APP/J1860/W/17/3177665 is referred to by the appellants as the principle authority in respect of the Significant Gap surrounding Lower Broadheath. The Inspector in that decision said that the Significant Gap is not a landscape policy, but the focus is upon openness. He considered that there were strong parallels with the Green Belt policy of openness and that there was a visual dimension to openness. He also stated that whilst it might be argued that individual proposals would have limited effect on the Significant Gap, the piecemeal erosion of the gap over time would erode its purpose. Those comments are equally applicable in this case.
15. The appellants' landscape architect states that the proposal would not diminish the function of the gap at this location. The reasoned justification of maintaining the gaps is to serve as a buffer or visual break between urban and rural areas and can add additional protection to open land that may be subject to development pressures. The appeal site with its openness carries out that function. It cannot be the case that the open character of the land would remain intact were the development to take place.
16. The appellants consider that the appeal proposal would "round off" this small part of the village by following existing defensible boundaries. However, there is limited development around the appeal site along its long south western boundary other than the Homelands. The land on the northern boundary is largely an orchard. Rather than rounding off development, the appeal proposal would represent a significant extension of the development pattern at this section of Laylocks Lane.
17. Whilst the physical appearance of the proposed development, which would be addressed at reserved matters stage, may reduce the overall effect of the proposed development, there would still be a clear encroachment onto land that is open countryside. The Council also refers to a public right of way close to Jessamine Cottage which is next to Apple Tree Lodge.
18. The appellants are of the view that the site is capable of accommodating a modest volume of development provided that a suitable and realistic planting strategy is employed. However, as this is an outline scheme, those details of a planting strategy are not before me for consideration.
19. The appellant indicates that the closure of Apple Tree Lodge access and driveway would create an opportunity to add and reinforce soft landscaping along the site frontage. However, the proposed site frontage landscaping shown on the plan at page 12 of the Appellants Statement of Case is all outside the red line boundary for this appeal proposal. Improving the site frontage landscaping can, in any event, occur at any time and is not dependent on this appeal proposal. Removing the existing landscape at the

front without mitigation across the front of the existing dwellings would urbanise the street scene.

20. Whilst the Council is criticised for not employing a suitably qualified landscape professional for this scheme, that is entirely a matter of choice for the Council. Any earlier comments made in respect of a previous scheme are not matters for consideration before me for this appeal.
21. I do find that the appeal proposal would harm the character and appearance of the area. It would therefore be contrary to Policy SWDP2(D) which states that development should ensure the retention of the open character of the Significant Gaps. It would also be contrary to Policy SWDP 25 which, amongst other things, states that development proposals should be appropriate to and integrate with the character of the landscape setting.

Living Conditions

22. The image at paragraph 2.53 of the appellants' statement shows the existing layout at the front of Laylocks Lane. Creating an access through this strip would bring vehicles particularly close to the side elevation of both dwellings. Whilst the appellants refer to a slightly wider access, with only a fence between the properties, there is limited space to expand and visibility splays would need to be kept clear to the front. The appellants also refer to the potential removal of the side kitchen window at Apple Tree Lodge by way of condition and propose the demolition of the veranda at Laylocks Cottage but as both Apple Tree Lodge and Laylocks Cottage are outside the appeal site boundary, neither matter could be reasonably secured by condition as part of this application.
23. The appellants refer to appropriate boundary treatments between the private drive and the existing gardens and existing built development but there is limited evidence at this outline stage as to how that would be achieved. Cars are likely to be passing close to the existing houses. At night time, there would be car lights particularly from vehicles turning right which are likely to impact upon front rooms of Laylocks Cottage.
24. Examples of access arrangements have been provided, however, each application has to be judged on its own merits. The development at Baradene Lane shows significant hedging between the side elevation of the houses and the drive which is not likely to be achieved at the appeal site due to the width of the strip of land. The examples also appear to relate to new developments rather than the appeal site where changes would be proposed to access arrangements to existing houses to accommodate new housing to the rear.
25. I therefore conclude that the development would be harmful to the living conditions of occupiers of the existing properties due to the vehicle movements. The proposal would therefore conflict with Policy SWDP 21 which, amongst other things, requires proposals to provide an adequate level of privacy.

Other Matters

26. The Framework states that relevant policies for the supply of housing should not be considered up to date if the Council cannot demonstrate a 5 year supply of deliverable sites. However, I have nothing before me that

would lead me to find that the Council does not have a 5 year supply of housing land. However, notwithstanding this, it is government policy as set out in the Framework to boost significantly the supply of housing land, albeit that the proposed development would provide a modest contribution of five houses.

27. The appellants referred to a number of appeal decisions in their original supporting documentation. However, having had regard to these decisions, I consider that they have different site-specific circumstances to the appeal before me. The appeal decision ref APP/H1840/W/17/3188250 for example refers to a technical breach of settlement boundary policy but the Council had failed to then set out clear and salient planning harm and that is not the case in this instance where the Council has set out what it considers to be the harm.
28. There have been letters of support and objection from local residents and I have taken into account the planning considerations raised by the residents in reaching my decision. The proposal would provide a modest economic and social benefit from the provision of five dwellings towards the supply of housing. Limited short term benefits would arise from construction work and subsequent local spending by the future household.
29. One affordable dwelling is proposed that would be sold at a discounted price and I have received a signed unilateral undertaking dealing with the proposed affordable dwelling. Some positive weight can be given to the affordable unit.
30. A recent appeal decision reference APP/G2435/W/18/3214451 (the Woodville decision) has been submitted by the appellants. The Woodville decision related to the grant of planning permission for 30 self and custom build dwellings and whilst it was decided on its own particular merits, the principle issues regarding self-build were addressed in some detail. However, at paragraph 23 the Inspector stated " Importantly, the S.106 Agreement submitted with the appeal proposal contains provisions to ensure that the proposed dwellings on the appeal site would meet the definition of self-build and custom housebuilding."
31. Although four houses are proposed to be self-build for the appeal proposal, there is limited information provided about how the self-build would be secured and controlled, as only the affordable dwelling is included in the unilateral undertaking. In the absence of such a mechanism, the self-build element cannot attract any significant weight in favour of this appeal.
32. The appellant has referred to paragraph 11 of the Framework applying, therefore only where adverse impacts significantly and demonstrably outweigh the benefits should an appeal be dismissed. On the evidence before me, the development plan in this instance is up to date. The development is contrary to relevant development plan policy and so the tilted balance does not therefore apply. The appellant also considers that a lack of a self-build policy engages the paragraph 11 tilted balance. However, in both instances, even if I had found that to be the case, the adverse impacts would significantly and demonstrably outweigh the benefits in any event.

Planning Balance and Conclusion

33. There would be significant adverse impacts in terms of the effect of the proposed development on the character and appearance of the area. I have also found harm to the living conditions of occupiers of Apple Tree Lodge and Laylocks Cottage. The development would also be contrary to the development plan strategy in terms of its location, and it has not been demonstrated that any relevant policies are inconsistent or out of date. As such, any benefits of the proposed development would be clearly outweighed by the adverse impacts I have found. For the reasons given, I dismiss the appeal.

E Griffin

INSPECTOR