



---

## Appeal Decision

Site visit made on 1 October 2019

**by D. Szymanski, BSc (Hons) MA, MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 25<sup>th</sup> October 2019**

---

### **Appeal Ref: APP/W1850/W/19/3233889**

### **Land to the rear of Paddock End and The Way, Mathon Road, Colwall, WR13 6ER**

- 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 Mr Simon Billingham of Fensell Properties Limited against the decision of Herefordshire Council.
  - The application Ref: P183202/F dated 23 August 2018, was refused by notice dated 12 February 2019.
  - The development proposed is erection of 2 no. five-bedroom houses and associated garages, driveways and amenity space.
- 

### **Decision**

1. The appeal is dismissed.

### **Procedural Matters**

2. Evidence submitted to the appeal by the appellant includes a Highways Appeal Statement (HAS) and plan no. 2016/L839/010/Rev B. Plan no. 2016/L839/010/Rev B differs from that submitted with the application as it includes a passing place on the access track reflecting a recommendation of the HAS. The HAS includes analysis of a traffic survey submitted with the application and draws upon technical guidance to set out proposals to increase visibility splays and undertake carriageway re-alignment works.
3. The HAS and revised plan includes a considerable amount of information and proposed alterations that represent a significant and material change from the planning application, that would be substantially different to that which was determined by the Council. I have applied the 'Wheatcroft Principles'<sup>1</sup> and find that the acceptance of the HAS and plan would deprive those who should have been consulted on the changed development the opportunity of such consultation. I have therefore dealt with the appeal on the basis of the scheme subject of the planning application determined by the Council.

### **Main Issues**

4. The main issues are:
  - the effect of the proposed development upon the Malvern Hills Area of Outstanding Natural Beauty;

---

<sup>1</sup> Bernard Wheatcroft Ltd v SSE [JPL 1982 P37]

- the effect of the proposed development upon the significance of the Colwall Stone/Upper Colwall Conservation Area as a development within its setting;
- whether the development would include a safe and suitable access; and,
- whether the development would make an effective use of the land with particular regard to the proposed mix of dwellings.

## **Reasons**

5. The appeal site measures approximately 0.45 hectares primarily comprising a fenced paddock area, lined by a row of mature trees covered by a Tree Preservation Order (TPO) to the south, immediately south of which runs public footpath CW13. The southern site boundary runs along the treed boundary up to Mathon Road, before it recesses around the generous plots of a pair of semi-detached dwellings (Paddock End and The Way). North of these the application site includes an access track that runs along its entirety, that would form the access on Mathon Road, between the front gardens of dwellings to its north and south. This track currently serves as an access to a single dwelling (named Alderley) around 60 metres (m) further to the west of the appeal site.
6. The appeal site is just outside what appears as the developed area of Colwall, although the settlement has no boundary in the adopted Herefordshire Local Plan Core Strategy (2015) (the CS). As a settlement listed in Policy RA2 of the CS, in principle sustainable housing growth is supported adjacent to the settlement, of which the appeal site could reasonably be considered to be.

### *Malvern Hills AONB*

7. The appeal site is located in the Malvern Hills Area of Outstanding Natural Beauty (the AONB), which encompasses the surrounding land including Colwall. Within the AONB paragraph 172 of the National Planning Policy Framework (2019) (the Framework) expects great weight to be given to conserving and enhancing the landscape and scenic beauty, as such areas have the highest status of protection. A number of dwellings line Mathon Road on its western side as it runs north-south, each set within maturely landscaped plots forming a linear pattern and a definable edge to this part of Colwall village and the Colwall Stone/Upper Colwall Conservation Area (the CA).
8. The appeal site and surrounding area is punctuated by groups and belts of trees, separating small field and paddock areas, providing filtered short and long distance views into the wider AONB landscape. When experienced along the access track and footpath CW13, the appeal site has the distinct feel and character of being part of the countryside, as it extends further west into the open verdant expanse of agricultural land in this part of the AONB. Due to its significant detachment from the nearest dwellings and its considerable mature landscaping the presence of Alderley to the north west does not detract from the rural feeling of this area.
9. The proposed development would divide the open paddock roughly in half and introduce two substantial two storey five-bedroom detached dwellings with detached garages and generous driveway/circulation areas. By reason of the introduction of the substantial built form and the domestication and formalisation of land within the plots, the development would result in a significant intrusion into the rural landscape. The development would also

appear at odds with the established pattern of dwellings on Mathon Road, by reason of their positioning well off to the side of the highway, their orientation and the arrangement of the garages, which further exacerbates the harm.

10. Some screening is provided by pockets and rows of surrounding vegetation, but it is not comprehensive and has a seasonality to it, reducing the cover when the trees are not in leaf. Being close to the edge of the established settlement and eminently visible from footpath CW13 the site is in a particularly sensitive location. I note proposals for landscaping including a hedgerow to the west, however, this would not alleviate the harm to any significant degree.
11. For the reasons set out above, the proposed development would be harmful to, and neither conserve or enhance the landscape and scenic beauty of the AONB. Therefore, the development conflicts with Policy LD1 of the CS which requires development conserves and enhances the natural, historic and scenic beauty of AONB through protection of its important character. The development would also be contrary to paragraphs 127 and 130 of the Framework which require development is sympathetic to local character. It would not conserve or enhance the landscape and scenic beauty of the AONB, contrary to paragraph 172 of the Framework, and as an area which has the highest status of protection in these respects, this matter is given great weight.

#### *Heritage Assets*

12. The CA bounds the east of the appeal site, stepping northwards along the maturely vegetated western boundaries of properties on Mathon Road and a small part of the access track. To the south the CA appears to run briefly along the southern site boundary with some of the TPO trees and footpath CW13, before heading further south and west away from the site.
13. Within the CA there is a statutory duty under section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing its character or appearance. Paragraph 193 of the Framework requires that when considering the impact upon the significance of a heritage asset great weight should be given to the asset's conservation. It also states that harm to the significance of a designated heritage asset can also derive from development within its setting. Where a proposal would lead to less than substantial harm, the harm should be weighed against the public benefits of the proposal (paragraph 196). Paragraph 172 advises that the conservation and enhancement of cultural heritage are important considerations in the AONB.
14. The significance of the CA in this area is derived from the large historic linear plots fronting Mathon Road to the west of the site and the mature treed and hedgerow lined boundaries. The appeal site marks the transition between these elements and the open Countryside to the west, with the paddock contributing to the setting by virtue of its open and undeveloped character. The appellant references the appeal site being at the end of an important view looking north-east from between Cherry Lodge and Grovesend Farm across open fields to the mature trees to the rear of the adjacent semi-detached dwellings and the Malvern Hills beyond. This particular view contributes to the rural setting of this part of the CA. There would also be views of the development from footpath CW13 and the access at Mathon Road.

15. The introduction of the significantly sized dwellings, the garages, driveway areas and the formalisation of land within the plots, would harm the existing rural, open and undeveloped character that the appeal site contributes to the setting of the CA. It would also interrupt and restrict existing views and the legibility of the CA boundary. Notwithstanding the development appearing of a characteristic density for this part of the CA, the positioning and orientation of the development would be contrary to the established layout and settlement pattern in this part of the CA. Whilst a small number of properties are set back significantly from the highway in the wider area, they are not so prominent or so frequent that they form the overriding character of the CA.
16. By reason of the siting and scale of the built form of the dwellings, the driveways and the garages, the development would impact upon an element of the setting that makes a positive contribution to the CA, such that it would harm its significance. This would be contrary to Policy LD1 and SD1 of the CS which expects development to conserve and enhance the heritage assets that contribute to important landscapes, including Conservation Areas. The harm to the significance of the CA would amount to less than substantial harm, which under paragraph 196 of the Framework should be weighed against the public benefits of the proposal. I will return to this matter later in my decision.
17. A small part of the access track onto Mathon Road is located in the CA. The provision of two additional dwellings would result in a small number of additional vehicle movements in part of the CA, however, this level of activity would not harm the significance of the CA in this regard and would preserve the character and appearance of the CA. Three Grade II Listed Buildings are located approximately 200m to the south and west of the site. The distances, existing built development, topography and tree cover between them and the appeal site, means the development would not affect their settings.

#### *Highway safety*

18. The appeal site access joins Mathon Road between maturely vegetated front gardens, where Mathon Road is narrow and bending, with a 60 miles per hour speed limit. During the determination of the application the Highway Authority (HA) concluded the increased use of the access was unacceptable due to visibility in both directions being substandard, and the development required a passing bay on site.
19. As set out earlier in this decision, I cannot base my decision upon the additional/revised proposals set out in the HAS. In reaching this conclusion, I noted the contents and main conclusions of the HAS and final comments in respect of various matters, including the passing place, traffic flows, visibility splays, highway boundaries, highway realignment works and planning policies. Notwithstanding the proposals, there were reservations by the HA about the acceptability, achievability and implementation of the proposals. I also note that the Parish Council set out a number of technical grounds for objection.
20. Even if I were to have based my decision upon the amended proposals, concluded they were acceptable (in accordance with Policy MT1 of the CS and the Framework), and were fully achievable and implementable, the new highway arrangements would not outweigh the harm set out above, in respect of the AONB and the CA. Based upon the access arrangements submitted to the Council in the planning application, these would not secure a safe access to the site, contrary to Policy MT1 of the CS.

### *Dwelling mix*

21. Policy H3 of the CS expects development provides a range and mix of housing units that can contribute to the creation of balanced and inclusive communities, evidenced by the Herefordshire Local Housing Market Assessment – 2012 Update (LHMA). The Housing Officer's comments broadly reflect the contents of the LHMA in the Council's evidence, which states at that time the market housing need for the area was primarily for 3-bedroom dwellings (66.4% of need) followed by 2-bedroom dwellings (37%), with 4+ bedroom dwellings having an oversupply (of 8.7%). Although the LHMA is over 5 years old, there is no differing evidence before me to counter the Council's view that the greatest need in the area remains to be for 2 and 3-bedroom dwellings.
22. The appellant acknowledges the need for smaller dwellings, however is concerned that such dwellings would be out of keeping with and result in harm to the CA and the AONB. On this basis the appellant suggests the requirements of Policy H3 should not apply to the proposal. The appellant advocates the proposal would not make a meaningful impact upon overall needs, but has some value in providing two dwellings, which would help meet the needs identified in the Draft Colwall Neighbourhood Development Plan. Although I note the appellant's view and the contents of the pre-application advice, I see no demonstration that two smaller dwellings would be more harmful than those proposed. I acknowledge the small contribution two dwellings would make to housing needs, however, there not sufficient justification to depart from the requirements of Policy H3 and the needs indicated in the LHMA.
23. Based upon the evidence before me there is a considerable under supply of 2 – 3-bedroom dwellings in the area, and oversupply of 4+ bedroom dwellings. Therefore, the proposed development would not make an effective use of the land with particular regard to the proposed mix of dwellings, or achieve balanced and inclusive communities reflecting the required dwellings to meet local needs, as informed by the latest LHMA. Therefore, the development would conflict with Policy H3 of the CS.

### **Other Matters**

24. The Council's ecological adviser has raised no objection subject to the recommendations of the Phase 1 Preliminary Ecological Survey being followed in respect of protection, mitigation, compensation and working methods, and a condition to secure ecological enhancements in accordance with Policy LD2 of the CS. I note various representations expressing concerns about the harm to ecological interests at the site and nearby, including references to Great Crested Newts and other species being recorded on adjacent land or nearby. However, I have no substantive evidence before me in respect of protected or other species and habitats, that would lead me to disagree with the Council's conclusion on this matter.
25. The trees on the southern boundary of the site are subject to a TPO. The appellant's pre-development Tree Survey confirms there would be no significant harm to protected trees as a consequence of the development.
26. I note the appellant has referenced a mix of building styles and types surrounding the site and is of the view that the materials and design of the dwelling would be keeping with the local area and reflect the Malvern Hills

AONB Guidance on Building Design for Colwall. However, the detailed design and materials proposed do not alleviate the harm I have found in respect of the AONB and CA.

27. A number of representations have referred to previous planning applications on the site, including during the 1970's. These are understood to have either been refused or withdrawn. I have not been provided with all the details and full circumstances of these proposals, therefore any direct comparisons are difficult, particularly given the length of time since they were submitted and the different policies in force at that time. Whilst I note the points raised in this regard, I must consider the appeal proposal on its own merits and impacts.

### **Planning balance**

28. The appellant advocates that the 'titled balance' should be applied in the current appeal, and the development would provide a much needed contribution to a considerable shortfall in local housing land supply. At the time of determining the application the Council could not demonstrate a deliverable five-year housing land supply, and more recent figures suggest the supply has reduced further (from 4.55 years in April 2018, to 4.05 years in April 2019). Both parties referenced previous appeals (such as Ref: APP/W3520/W/18/3194926 and APP/W3520/W/18/3196295) referring to figures of 3.4 years and 4.54 years, although I have not been supplied with these decisions and am unaware of the specific circumstances of each.
29. As required by paragraph 196 of the Framework harm to the CA should be weighed against the public benefits of the proposal. The development would result in some small temporary economic benefits from constructing two dwellings and once built a minor sustained benefit to the economy. Notwithstanding the conflict with Policy H3 of the CS, there is likely to be a small benefit to the aims of supporting strong, vibrant and healthy communities through the supply of two dwellings. There appears to be a small number of services and facilities within the village that would be accessible by walking, giving the development some small accessibility merits. Any overall benefits from habitat creation would be likely to be small.
30. On-balance, it is considered these and any other the public benefits (for example, potential contributions towards renewable energy generation) would not outweigh the harm to the setting of the CA as a heritage asset, which attracts great weight in accordance with paragraph 193 of the Framework. Furthermore, the development would be harmful to the landscape and scenic beauty of the AONB. In such circumstances, in accordance with paragraph 11d)i) of the Framework, there is no requirement for me to apply the 'titled balance' under paragraph 11d)ii).

### **Conclusion**

31. The proposed development would be contrary to the development plan and the National Planning Policy Framework and there are no other considerations, including the policies of the Framework, which outweigh this finding. Accordingly, for the reasons given, the appeal should not succeed.

*Dan Szymanski*

INSPECTOR