



Appeal Decision

Site visit made on 14 October 2019

by Rachael Pipkin, BA (Hons), MPhil, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th November 2019

Appeal Ref: APP/W1850/W/19/3233908

Mirrorbrook Small Holding, Stoney Cross, Cradley, Malvern, WR13 5JB

- 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 Andrew Parkhill against the decision of Herefordshire Council.
 - The application Ref: 184247 dated 16 November 2018, was refused by notice dated 30 January 2019.
 - The development proposed is detailed planning application for 3 no. two-bed semi-detached/terraced houses, 3 number 2-bed apartments, one 3-bed semi-detached, 4 no. 4-bedroom detached.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. Notwithstanding the access onto the A4103 shown on the submitted drawings, the appellant has confirmed that the proposed vehicular access serving the development would be an existing approved access onto the B4220 associated with a development of 5 houses to the south of the site. I have determined the appeal on that basis.
3. One of the reasons for refusal in the Council's decision notice was the absence of a completed S106 legal agreement. During the course of the appeal, the appellant has provided a Unilateral Undertaking (UU). The Council was given the opportunity to comment on this. I will return to this later in my decision.

Main Issues

4. The main issues are:
 - whether or not the appeal site is a suitable location for housing, having regard to local and national policy for the delivery of housing;
 - the effect of the proposed development on the character and appearance of the surrounding area, with particular regard to the Malvern Hills Area of Outstanding Natural Beauty (AONB);
 - the effect of the proposed development on the setting of a Grade II listed building;
 - the effect of the proposed development on highway safety;

- the effect of the proposed development on the living conditions of future occupiers, with regard to the provision of private outdoor space; and
- whether the proposed development would be likely to increase the risk of flooding off-site.

Reasons

Suitable location

5. The Council's strategy for managing housing growth outside the main settlements is set out in Policy RA2 of the Herefordshire Local Plan Core Strategy 2015 (the Core Strategy). This policy supports housing growth in or adjacent to settlements which have been identified to be the main focus of proportionate housing development, where certain criteria are met. These relate to design and layout, use of brownfield land, context and landscape setting, and the provision of an appropriate housing mix reflecting local demand.
6. The Cradley Parish Neighbourhood Development Plan 2017 (NP) defined the settlement boundary for Cradley. Policy CNDP2 supports housing development adjacent to settlement boundaries which make a positive contribution to their landscape setting. The NP defines appropriate sites as having a moderate, high or very high capacity to accommodate development.
7. Housing development outside defined settlements is within the countryside where development is restricted. Policy RA3 of the Core Strategy permits residential development in rural locations where the proposal requires a countryside location, such as development for agricultural or forestry, rural enterprise workers, is a replacement dwelling, would make use of redundant or disused buildings, is a rural exception housing, is of exceptional quality and innovative design or meets the needs of gypsies or other travellers.
8. Cradley is a settlement where proportionate housing development would be acceptable. The appeal site is adjacent to but outside the defined settlement boundary of Cradley and therefore within the countryside for planning purposes. The proposed development would provide 11 dwellings.
9. The site is identified in the NP as having a low/very low capacity for development based on the landscape assessment for Cradley. The proposed development would not provide housing for any of the users identified under Policy RA3 nor would it meet the other criteria under that policy. The proposal would therefore not comply with that policy.
10. The Council accepts that it does not have a 5-year housing land supply (5YHLS) of deliverable sites. Consequently, policies for housing delivery are considered out of date. Policy SS1 of the Core Strategy sets out that in those circumstances the Council will grant permission unless material considerations indicate otherwise, taking into account whether any adverse impacts of granting permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in national policy taken as a whole. I will return to this later in my decision.
11. My attention has been drawn to two planning applications granted for residential development outside the village boundary on the site immediately south of the appeal site. However, I note that the first of these permissions for

the construction of 4 houses pre-dated the adoption of the NP which defined the settlement boundary for Cradley. The second permission, which added a fifth house to this development, was made on the basis that the landscape capacity of the site could no longer be considered low since it had been altered as a result of the previous permission for 4 dwellings. I return to the landscape capacity of the appeal site in my reasoning on character and appearance.

12. The site is in close proximity to bus stops which would provide future occupiers with access to nearby settlements. I have been provided with no indication of the frequency of these services and whether they would provide a viable alternative means of access to occupants needing to regularly travel to other locations. The site is also a short walk from the centre of the village and services it provides. However, whilst only a short distance, this would be along an unlit and reasonably busy rural lane with no footpath. This would be neither attractive nor convenient for future residents. I therefore consider the use of the private car is likely to be the most practical means that residents would have to reach the facilities and services they require either within the village or further afield. This leads me to conclude that the location is not an accessible one.
13. The proposed development would not accord with Policies SS2, RA2 and RA3 of the Core Strategy. It would also not comply with Policies CNDP1, CNDP2 and CNDP9 of the NP. These policies together and amongst other things restrict housing development in the countryside unless it provides proportional housing growth in or adjacent to settlements where it would not cause harm within its context. While the development would not accord with planning policies in terms of its location, those policies cannot be given full weight in the absence of a 5-year housing land supply.

Character and appearance

14. The appeal site occupies an elevated position on the corner of the A4103 and the B4220 which leads into the village of Cradley set downhill from the appeal site. It forms part of a field previously used as a nursery and includes an area of hard standing associated with its previous use. At the time of my site visit, I observed that a significant part of the site has been subject to earthworks. The site is enclosed on its roadside boundaries by a combination of mature and new hedging and trees. The western boundary is open and the site merges into the field, whilst to the south it adjoins a site currently being developed to provide 5, contemporary detached houses.
15. The surrounding area is semi-rural and open in character with dispersed rural buildings and houses surrounded by fields, with a more linear form of development on the east side of the B4220. A Grade II listed building, Birch Cottage, is located within this linear development opposite the southern part of the site. The appeal site is located outside the Malvern Hills AONB which lies to the east but is within the AONB setting.
16. The proposed development would comprise 4 detached two-storey houses, a terrace of 3 two-storey houses and a part two/part three-storey block of flats. The front three-storey section of this building would be curved with a pitched roof providing additional accommodation at third floor level served by a large window with the rear section, a more traditional two-storey pitched roof building. The houses would incorporate curved green roofs, balconies and

large areas of glazing. The site would be laid out with roads and areas of surface parking.

17. There is no prevailing form of architecture or style of building within the surrounding area. There are also examples of contemporary buildings in close proximity to the appeal site, including that of the development to the south of the site. The proposed development has been designed to integrate with this neighbouring development. However, whilst I accept that contemporary design may be acceptable in this location, the density of development and the associated car parking and road layouts, would result in a form of development that would not be in keeping with the pattern of development and semi-rural character of the wider area. The extension of this type of high density development even further from the more densely developed centre of the village, would result in further encroachment of built development and urbanisation of the countryside and the erosion of its semi-rural character.
18. The elevated position of the site in relation to the village below would make the new buildings very prominent. The three-storey building, due to its height and position at the highest end of the site, would be particularly prominent. The appellant has suggested that this building could create a more defined gateway to the village. The entrance to Cradley off the A4103 is characterised by a loose pattern of development of low density, single and two-storey buildings, including Birch Farm which also has dormer windows at second floor level. The introduction of a three-storey building away from the main village in an elevated and prominent location, albeit inspired by the architecture of local oast houses, would appear incongruous and out of context with this part of the village.
19. Due to the topography of the landscape and the existing vegetation, the appeal site would not be easily visible from within the AONB. However, due to the elevated nature of the road, the proposed development would come into view along a short stretch of the A4103 with the AONB beyond. The appellant has argued that these views, due to the limited length and connectivity of the pavement from which the views can be observed, cannot be considered to provide outstanding panoramic views of the Malvern Hills. The views are not only experienced and enjoyed from this footpath but also by people travelling in vehicles along the A4103.
20. The appellant has indicated that the development would be screened from these views by the existing hedgerow and new planting along the site boundaries with the rounded green roofs and ground levels of the proposed development further reducing any visual impact. No details of site levels have been provided although it is indicated that ground levels would be reduced to the existing ground level of the area of hard standing.
21. However, this hardstanding is in an elevated position. I observed that a metal shipping container, serving as a site office, located on the hardstanding with the site and the top of Birch Cottage were all visible from the A4103 with the AONB beyond. Consequently, this leads me to conclude that any of the proposed buildings set at this level, would still be visible and would interrupt views of the AONB beyond the site. The more urban and dense character of the development would be harmful to views of the AONB. The approved housing scheme south of the site would be downslope from the appeal scheme and therefore would be significantly less visible within the AONB setting.

22. The adjoining development has changed the character of the appeal site. Whilst this may have resulted in a reduction in the degree of the site's sensitivity to change when viewed in the context of these adjoining houses, I do not find that this has changed when taken in the context of the surrounding area and prominent location with views of the AONB beyond. In my view, the appeal site due to its more elevated and prominent position, visible from the wider area and upslope from the adjacent development, would still have a low capacity for change. Even though the site has been recognised as being in a degraded state and poor condition and would benefit from some improvement. For the reasons I have already set out, development of the proposed density in this location would be harmful to the character and appearance of the area.
23. My attention has been drawn to an extant permission, dating back to 2009, for the siting of two polytunnels on the appeal site which were found to be acceptable in landscape terms. However, I do not have the full circumstances of that case before me. Nonetheless, I accept that if these were to be erected, they would have a harmful impact on the landscape. The appellant considers this represents a genuine fallback position on the appeal site. However, I have no substantive evidence to suggest this would be implemented, particularly given its proximity to the approved scheme of 5 houses.
24. I conclude that the proposed development would significantly harm the character and appearance of the surrounding area, with particular regard to the setting of the Malvern Hills AONB. It would therefore conflict with Policies LD1, SD1 and SS6 of the Core Strategy and Policies CNDP2 and CNDP9 of the NP. These policies, together and amongst other things, seek development that conserves and enhances the historic and scenic beauty of important landscapes, making a positive contribution to their landscape setting and takes into account local character. It would also conflict with the design objectives of the National Planning Policy Framework (the Framework).

Setting of the Listed Building

25. Birch Cottage dates back to the 17th century and incorporates a timber frame and plaster panels. It has previously been extended which has significantly enlarged the original cottage. Despite this modern extension, the features of the original cottage are retained, and its character remains that of a traditional, rural cottage. The cottage is set within an agrarian landscape, with the immediate area being semi-rural characterised with farmland, hedgerows and dispersed development.
26. The proposed development, providing a mix of modern buildings incorporating large areas of glazing, balconies and curved green roofs, would not relate to this nearby listed building. The amount of development laid out in a high-density pattern of development along a central road and enclosed along its boundary with the B4220 by a 3 metre high green sound barrier, would be a more urban form of development which would not provide any linkage to the existing pattern of development along the B4220 where the listed building is located. Whilst the retention of the existing high boundary hedge would reduce the visual impact of the development, the appeal site is in a more elevated position than Birch Cottage and directly opposite and the development would not be completely screened from view. As I have set out above in relation to character and appearance, this would be out of keeping with the semi-rural and

agrarian character of the wider area which contributes to the setting of this listed building.

27. Even though the Council allowed a contemporary development of 5 dwellings and did not find harm to the significance of the asset, the development before me, in combination with those already permitted, would overwhelm the rurality of the location, and erode those characteristics that contribute to the listed building's setting.
28. The appellant has referred me to the extant planning permission on the site for two polytunnels and a storage building on site which were found to be acceptable in terms of their impact on the listed building. However, as I have set out, I have no evidence that this represents a genuine fallback position. Furthermore, I note the position of the polytunnels would be further from the listed building than the appeal scheme, they would also be an entirely different type of structure and are not therefore directly comparable to the scheme before me.
29. The proposed development would lead to less than substantial harm to the setting of the designated heritage asset, namely Birch Cottage, because the development would be partly screened by the boundary hedge. I have attached considerable importance and weight to the desirability of avoiding any such harmful effect on the listed building in accordance with Section 66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. Paragraph 196 of the Framework states that such harm should be weighed against the public benefits of the proposal.
30. The scheme delivers a number of public benefits in that it would contribute to the area's housing supply by providing 10 market dwellings and 1 affordable unit in a range of two, three and four-bedrooms and would contribute to housing mix, although the provision of affordable housing falls below the Council's target for this on a scheme this size. I cover this in more detail later on in my decision. It would also provide some economic benefits during the construction phase and from the ongoing maintenance and servicing of the properties in the future, as well as future occupants providing additional support to local facilities. There would be some environmental benefits associated with the development which would provide sustainable energy and 'green' features including rainwater harvesting as well as ecological enhancements. However, these are not substantial benefits despite the absence of a 5YHLS as set out below, and do not outweigh the harm caused to the heritage asset to which I give considerable weight.
31. Taking the above matters into consideration, I conclude that the proposed development would fail to preserve the setting of the Grade II listed building. It would therefore conflict with Policies SS6 and LD4 of the Core Strategy and Policy CNDP9 of the NP. These policies together seek development that takes account of local character and protects, and where possible enhances, heritage assets and their settings. It would also fail to comply with the heritage aims and objectives of the Framework.

Highway safety

32. The proposed access to the site would be some distance away from this junction onto the B4220 which appears to be a well-used local road providing a north-south link between the main A roads within the region. The existing

access was approved as part of the permission for 4 houses on the site to the south of the appeal site, where visibility in both directions was found to be satisfactory for a road subject to a speed limit of 30mph. Together, both approved schemes provide 5 residential units with garage parking for 8 or 9 cars. I note that when permission was granted for the fifth house that a single dwelling was not expected to have a material impact on the operation of the local highway network.

33. The proposal before me would provide an additional 11 residential units and parking for 29 cars. The access was found acceptable for 5 dwellings however, the proposed development would significantly increase the number of dwellings and vehicle movements that would use this access. The existing access onto the B4220 is located on a bend which reduces forward visibility for vehicles turning right into the access. The increased intensity in the use of this access could potentially lead to an increased risk of collisions between users of the highway. Furthermore, this stretch of the B4220 does not have a dedicated footpath for pedestrians.
34. The additional occupiers associated with 11 dwellings would lead to more pedestrians seeking to access village services. The absence of a suitable footpath would result in pedestrians walking on the carriageway and give rise to a greater risk of conflict between pedestrians and traffic. Given the intensification in the use of this access and, in the absence of evidence that this would not harm highway safety, I am not satisfied that the proposed development would not give rise to unacceptable harm to highway safety.
35. I note that the highway authority objected to the scheme on this basis as well as to the layout of roads, parking and footpaths and the road gradient within the site. Had I found no other highway safety concerns, it may have been possible to have imposed a condition to secure an appropriate layout and gradient through the submission of additional details.
36. In the absence of conclusive evidence to demonstrate otherwise, I conclude that the proposed development would have potential to harm highway safety. It would therefore conflict with policies SS4 and MT1 of the Core Strategy which together require development to be designed and located to minimise impacts on the transport network and to ensure developments have safe entrance and exit. It would also not comply with the Herefordshire Council Highways Design Guide for New Developments 2006. It would also not accord with the transport objectives of the Framework.

Living conditions

37. The Council has raised a concern that the proposed units have limited private garden areas and that the proximity of these to adjacent roads provide unsatisfactory living conditions. The plans indicate that each of the proposed units would have private garden space. I have been provided with no figures to show the extent of these gardens. However, the Council has no adopted space standards in respect of the provision of private garden space.
38. The layout plan shows the garden space to be in a variety of shapes and sizes. With the exception of plot 12 which would have a regular shaped reasonably wide and deep garden, the proposed gardens appear relatively small and awkwardly shaped. This would limit their use as private space for sitting out, hanging washing out to dry or as outdoor play space. Moreover, those gardens

serving plots numbered 6 to 11 would be adjacent to the B4220 and would have a 3 metre high green sound barrier running along their rear boundary. Whilst this would serve to reduce noise from the road within these properties, a barrier of that height in conjunction with the relatively shallow depth of these gardens would have an enclosing effect on these spaces which would reduce the quality of the space.

39. This leads me to conclude that the proposed development would not provide adequately for the living conditions of future occupiers, with regard to the provision of private outdoor space. It would therefore conflict with Policy SD1 of the Core Strategy which requires development to safeguard residential amenity of future residents.

Flooding issues

40. Paragraph 163 of the Framework advises that when determining planning applications, decision-makers should ensure flood risk is not increased elsewhere. Policy SD3 of the Core Strategy sets out that where flooding is identified as an issue, new development should reduce flood risk through the inclusion of flood storage compensation measures; and that development should not result in an increase in run off.
41. The appeal site lies within Flood Zone 1 and is considered to be a low risk of flooding. The Council has made reference to a property at risk of flooding downstream of the site but has provided no details of this. If I had been minded to allow the appeal, I might have gone back for further clarification about this.
42. Given the topography and the steeply sloping character of the site in combination with the increased hard surfacing of the site to provide roads and car parking associated with the development, there is a likely risk that the development would give rise to additional run off. This has the potential to increase the risk of flooding to properties downslope of the appeal site. I acknowledge that a flood risk assessment would not be required for a development of this size within Flood Zone 1. Nevertheless, I consider, in these circumstances, it appropriate for the Council to require details in order to assess whether drainage matters could be suitably addressed or mitigated.
43. I have been referred to the extant permission for the siting of polytunnels, a pond and storage building on the site where the Council concluded that the scheme was acceptable in terms of drainage. However, in my view, a development of 11 residential dwellings with associated roads and surface parking would be likely to have a different effect on drainage than that arising from the siting of two polytunnels.
44. Given the approach the Council took in conditioning these matters in respect of the development to the south of the site, I agree a similar approach requiring details of drainage may have been appropriate. However, as I am dismissing for other reasons it has not been necessary for me to consider this matter in any further detail.
45. Although conditions could potentially be used to secure mitigation measures, the feasibility of such measures has not been demonstrated. In the absence of such evidence, I conclude that the proposed development would be likely to increase the risk of flooding off-site. It would therefore conflict with Policy SD3

of the Core Strategy, which requires development to not result in an increase in run off and to incorporate measures to mitigate the effects of this. I have found no conflict with Policy SD4 of the Core Strategy which relates to wastewater treatment and river water quality and is not directly relevant to the matter before me.

Other Matters

46. The submitted UU aims to secure financial contributions towards meeting the need for additional facilities and services arising from the development in accordance with Policies SC1, OS2 and ID1 of the Core Strategy which together seek the provision of additional social and community facilities, open space and the provision of infrastructure to support development. The UU also makes provision for 1 affordable housing unit.
47. Policy H1 of the Core Strategy seeks to secure 40 per cent of development as affordable housing. This would be secured through a section 106 agreement. The Herefordshire Council's Planning Obligations Supplementary Planning Document 2008 (Planning Obligations SPD) sets out that where the development of a site has been phased, or a site sub-divided or parcelled in order to avoid the application of the affordable housing policy, the whole site will be assessed. The provision of 1 affordable housing unit would not meet this target for either the appeal scheme on its own or when the development is considered as a whole. It would therefore conflict with the requirements of both Policy H1 and H3 of the Core Strategy which together seek an appropriate mix of housing and affordable housing and the Planning Obligations SPD.
48. The Council has not commented on the UU but given I am dismissing for other reasons it has not been necessary for me to consider this matter in any further detail.
49. I have been made aware of the appellant's frustrations with the Council in the handling of his planning application and the removal of certain material from consideration. However, the accuracy of the material in question is in dispute and it is not a matter before me to determine this. I have nevertheless undertaken a site visit and made my own observations.

Planning Balance and Conclusion

50. The Council acknowledges that it is unable to demonstrate a 5YHLS and that its policies that relate to housing are out of date. The appellant considers that since the Council cannot demonstrate a 5YHLS, the presumption in favour of sustainable development, as set out in Paragraph 11 should apply.
51. However, paragraph 11d) makes it clear that the presumption in favour of sustainable development does not apply if the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed. Footnote 6 sets out that this includes, amongst others, designated heritage assets. Given that I have found that there would be harm caused to the significance of a designated heritage asset that is not outweighed by the public benefits of the scheme, I consider that this is a clear reason to refuse the development proposed in accordance with the Framework. In this regard, the scheme would also not comply with Policy SS1 of the Core Strategy. Since the presumption (at

paragraph 11d) of the Framework does not apply, then paragraph 14 of the Framework is not engaged.

52. The development would result in harm to the setting of a listed building, the character and appearance of the area, the setting of an AONB and highway safety contrary to a number of policies within the development plan. For these reasons, and having regard to all other matters raised, I conclude the appeal should be dismissed.

Rachael Pipkin

Inspector