
Appeal Decision

Site visit made on 11 August 2020

by L Page BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th September 2020

Appeal Ref: APP/J1860/W/20/3253525

The Lodge, Little Witley, Worcester WR6 6LL

- 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 & Mrs David & Jane Edmonds against the decision of Malvern Hills District Council.
 - The application Ref 19/00920/OUT, dated 11 June 2019, was refused by notice dated 16 December 2019.
 - The development proposed is outline application for the erection of 1 self-build dwelling and associated works (all matters reserved except for access).
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was submitted in outline form with only access being assessed at this time. All matters of appearance, landscaping, layout and scale were reserved for future approval(s). From the description of development, it is clear that the quantum of development being sought is for a single dwelling. The appeal is determined on this basis, treating the submitted site plan as illustrative only, in so far as it indicates the point of access and a possible layout up to the maximum stated quantum.
3. The description of development has been taken from the appeal forms and decision notice, which make clear that the dwelling would be self-build. This is considered an important detail in light of the appellants' contentions within their statement of case. The appeal has been dealt with on this basis.

Main Issues

4. The main issues are:
 - (a) whether the site is in the open countryside and represents an acceptable location for a new self-build dwelling;
 - (b) the effects of the proposal on access and highway safety; and
 - (c) whether a planning obligation comprising affordable housing contributions is necessary as a result of the proposal and the extent to which it has been appropriately secured.

Reasons

Location

5. The site is located on land at The Lodge, comprising ancillary buildings and ornamental landscaping which is indicative of its current residential usage. The boundary of the site is delineated by large mature hedgerows and other natural features. Immediately beyond the site's boundary to the north and west is land that appears to be in agricultural use. To the east and south is neighbouring development that is predominantly residential in nature and together comprises the settlement of Little Witley. The South Worcestershire Development Plan 2016 (SWDP) does not include the site within the defined development boundary. Consequently, it is within the open countryside for the purposes of managing development in accordance with the SWDP's development strategy.
6. The SWDP does not contain policies for self-build dwellings and does not treat them as an exception for the purposes of controlling dwellings in the open countryside. I note the appellants' reference to a self-build and custom housebuilding progress report and emerging policies within the SWDP Review. However, such evidence merely demonstrates that self-build proposals are popular and not that they provide a tangible benefit to the public to be weighed in the planning balance. Furthermore, there is no compelling evidence that the existing florist business constitutes a rural enterprise. Neither has it been demonstrated that it is necessary for the future proprietor to establish a dwelling in close proximity to the business premises in order for it to remain viable. For example, rural worker dwellings are normally robustly justified in accordance with the functional and economic tests established within Annex G of the SWDP. Without such evidence, I have treated the proposal as open market housing for the purposes of applying Policy SWDP2, which does not allow such development in the open countryside.
7. Policy SWDP2 of the SWDP functions to strictly control development in the open countryside subject to justified exceptions that are clearly designed to enhance or maintain the vitality of rural communities and its intrinsic character and appearance. It is implicit therefore that proposals which conflict with Policy SWDP2 would also harm the rural character and appearance of the open countryside. The appellants contend that the site's existing use as a residential garden mitigates any such effects. However, the creation of a separate planning unit would introduce urbanisation effects that would most likely be substantially in excess of ancillary development that might otherwise come forward in conjunction with The Lodge. This would harm the rural character and appearance of the area.
8. The Council's contention that the loss of hedgerow would exacerbate such effects appears somewhat immaterial, not least because matters of landscaping (among other things) are reserved for future approval and therefore firm conclusions cannot be drawn at this juncture. Similarly, the appellants contend that the boundary treatments of the site could mitigate the visual effects, but these are also reserved matters.
9. In any event, the proposal would still be in conflict with Policy SWDP2, insofar as it does not allow open market housing in such locations as a matter of principle and is not predicated on mitigating factors, such as landscaping. Inappropriate development remains inappropriate development even if it is robustly screened.

10. I acknowledge the appellants' contention that it would be difficult to find any project of any significance that was wholly in accordance with every relevant policy in a given development plan. However, the proposal's open countryside location is central to the case, and not a peripheral matter. The policy is fundamental and carries substantial weight in determining whether the proposal accords with the development plan as a whole, notwithstanding any other material considerations that might have been identified. In a similar context, I acknowledge the appellants' contention that land is not isolated simply because it is in the open countryside. However, even if it was demonstrated that the site was not isolated, it would still be located outside the development boundary and in the open countryside for the purposes of applying Policy SWDP2 and be subject to strict controls therein.
11. Overall, the proposal would constitute the development of open market housing within an open countryside location that conflicts with Policy SWDP2 of the SWDP. Among other things, this policy seeks to safeguard the open countryside by strictly controlling development.

Access and Highway Safety

12. The A443 is a moderate speed highway which runs adjacent to The Lodge and the site and is where the proposed point of access would be located. The appellants contend that the land required to achieve adequate visibility splays is within their control, but the Council disagree and contend that the visibility splay to the west encroaches on third party land and cannot be achieved. This is based off of an x-distance of 2.4 metres. The Council state that their position stems from information available to the Highway Authority. However, this information has not been submitted as evidence and therefore the Council's position has not been fully established.
13. Consequently, I am left with the appellants' plans, and from scrutinizing them, it is not apparent that the visibility splay to the west does in fact encroach on third party land. Furthermore, the appellants have identified Worcestershire County Council's Highways Design Guide 2011 where there is flexibility relating to visibility splays, particularly relating to the x distance. In this context I see no reason why a Grampian style condition could not have been used in order to secure further details confirming that the visibility splay was in actuality forward of the fence line as contended by the appellant. Or that an appropriately reduced x-distance in accordance with the design code could not have been secured, which would result in a less acute relationship with the boundary in question and likely achieve suitable visibility splays and maintain access and highway safety.
14. Overall, there appears at least some flexibility available to suggest that a workable solution could be achieved, perhaps secured by condition that avoids conflict with Policy SWDP21 of the SWDP, which among other things seeks to ensure vehicular traffic from development is able to access the highway safely.

Affordable Housing

15. Policy SWDP15 of the SWDP (insofar as it was originally published) applies to all residential development and requires affordable housing contributions therein. However, the SWDP Affordable Housing SPD 2016 (within Paragraph 3.5) makes clear that the Council should implement SWDP15 differently to the originally published policy to account for national thresholds.

16. Accordingly, the SPD goes on to establish that unless a proposal's total combined gross floorspace exceeds 1000 sqm, on sites of five dwellings or less, no affordable housing contributions will be sought across the whole of the plan area. The proposal is for a single dwelling and notwithstanding the fact that its final form would be controlled under future reserved matters approval(s), there is no evidence that its floorspace is likely to exceed 1000 sqm. Therefore, a planning obligation comprising an affordable housing contribution is not necessary. Consequently, there is no conflict with Policy SWDP15 of the SWDP or the Affordable Housing SPD, and the proposal is therefore acceptable in this regard.

Other Matters

17. The Courts¹ have determined that the Framework explains in clear and complete terms the circumstances in which, and the way in which, the presumption in favour of sustainable development is intended to operate. There is no other presumption in favour of sustainable development that exists independently of that prescribed by Paragraph 11 of the Framework. If a proposal conflicts with an up-to-date development plan and where none of the provisions in Framework Paragraph 11 d) and Footnote 7 apply, it cannot benefit from the presumption in favour of sustainable development. In this context, the appellants' contention that the proposal amounts to sustainable development is acknowledged but assessed based on its constituent parts as set out below; the presumption has not been engaged.
18. The appellants have set out a series of accessibility credentials (such as active travel and public transport) and biodiversity and green infrastructure enhancements in support of the proposal. However, the level of accessibility enjoyed by the proposal or the other contended benefits do not represent an exception for housing in the open countryside within the requirements of Policy SWDP2. Housing land supply is not capped at a ceiling, but the small scale of the proposal taken together with the fact the Council can demonstrate adequate supply, means that any benefits associated with the proposal would be limited. Similarly, social and economic benefits for the local area comprising footfall at nearby shops amongst other things would also be limited.
19. None of the other matters raised by the appellants sufficiently relate or carry more than limited weight in order to change my findings on the main issues.

Conclusion

20. The proposal would not have an unacceptable effect on access or highway safety and would not require a planning obligation in the form of an affordable housing contribution. Nonetheless, these matters do not justify the proposal's location in the open countryside and the appeal is therefore dismissed.

Liam Page

INSPECTOR

¹ Barwood Strategic Land v East Staffordshire BC and SSCLG [2017] EWCA Civ 893.