
Appeal Decision

Site visit made on 15 December 2020

by L Page BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th January 2021

Appeal Ref: APP/J1860/W/20/3258786

Land at Beauchamp Road, Malvern

- 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 Howard of Fortis against the decision of Malvern Hills District Council.
 - The application Ref 19/00542/FUL, dated 29 March 2019, was refused by notice dated 29 May 2020.
 - The development proposed is the erection of 9 new affordable dwellings, new equipped play area and associated infrastructure.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The description of development has been taken from the appeal forms and decision notice, which was amended from the application forms. An executed Section 106 Agreement has been submitted to address the second reason for refusal, but I have still assessed whether the planning obligations are necessary and resolve the matters in dispute under the appeal.

Main Issues

3. The main issues are:
 - (a) the effects of the proposal on available green space; and
 - (b) whether planning obligations are necessary and any benefits therein.

Reasons

Green Space

4. The site is located on land that is between Beauchamp Road and Leigh Sinton Road within the Dyson Perrins Ward of Malvern. It is a large area of undeveloped green space contained within an otherwise immediately urban environment, and these characteristics are indicative of the site's green space designation pursuant to Policy SWDP38A of the South Worcestershire Development Plan 2016 (SWDP). In broad terms, under Policy SWDP38B of the SWDP, development on green space is only permitted where the proposal is for community or recreational use, the green space is surplus to requirements or alternative green space is secured to offset any loss. Similarly, Policy MG2 of the Malvern Town Neighbourhood Plan 2019 (MTNP) designates the site as neighbourhood open space.

5. The site forms part of the amenity green space typology, which among other things would include characteristics of an informal nature. On my visit, it was apparent that the site's characteristics were broadly consistent with this typology, whilst also providing an important break and visual relief from the urban environment. Furthermore, it appeared generally unmanaged, which was reflective of its biodiversity potential. It is important to note that green space is designated both for recreation and its broader character, among other things. This is reinforced under Policy MG2 of the MTNP, which states that all open space of public value, offer opportunities for sport and recreation and can act as visual amenity. Overall, from my site visit and considering other policy details, it is clear that such green spaces perform a multifaceted role in meeting community needs.
6. The proposal would comprise affordable housing on the site and whilst it does include elements of open space and an equipped area of play, it does not include replacement green space of equivalent value elsewhere. Consequently, it is self-evident that the proposal would not meet the first or third exception criteria under Policy SWDP38B of the SWDP. Therefore, the acceptability of the proposal would hinge on whether there is a surplus of green space under the second exception criteria. In this context, the local needs assessment demonstrates that there is a minimum basis of provision for this particular typology of green space in the wider area, including other areas of green space in addition to the site which are easily accessible. It does not necessarily demonstrate that there is a surplus or that the full spectrum of qualitative aspects of the green space on the site in this case are adequately replicated elsewhere, an important consideration established under another appeal¹ determined in accordance with the same SWDP.
7. Notwithstanding any technical or quantitative assessment in accordance with the three tests set out in the updated open space assessment, how the green space may be qualitatively valued by the local community has not been sufficiently proven, whether through robust engagement with those concerned or otherwise. Policy SWDP38 of the SWDP reinforces the importance of understanding community need stating that assessment of both community and technical need should be undertaken, presumably in equal measure. There has been limited consultation with 30 people in July 2018, but it is not clear whether this was directly related to a formal qualitative assessment of the existing green space and community need therein, or in relation to an informal drop in event for the proposal generally. In any event, it is not clear whether 30 people represents a comprehensive sample of local stakeholders at large given the population of the area is magnitudes greater than this number.
8. Furthermore, it is also not clear whether such a sample would still be representative given Policy MG2 of the MTNP, which more recently designates the site as neighbourhood open space relative to the older consultation exercise. This reinforces the position of Policy SWDP38 of the SWDP. Consequently, in the absence of competing evidence to the contrary the logical conclusion would be that there is still a community need for the green space subject to the proposal, even considering the existence of other green space in the area. Consequently, there is not a sufficiently robust evidence base in front of me to demonstrate that a surplus does exist, and the loss of green space at the site would generate substantial harm in this context.

¹ APP/H1840/W/19/3241960

9. It appears the green space is in private ownership and access rights could cease at any time, or alternatively be improved under the proposal to deliver betterment in access terms. However, as I have reasoned, the value of the site is multivariate and not derived from a single characteristic. Among other things, the green space provides relief from an otherwise urban environment in visual terms, even if access rights were restricted, a substantial number of dwellings back onto the site, and it therefore represents relief for a substantial number of local occupiers.
10. I cannot reasonably or reliably conclude that the proposal would result in net gain when an appropriate metric (Biodiversity Metric 2.0 or similar) has not demonstrated the baseline biodiversity value of the site or how the proposal would definitively deliver net gain in this context. Overall, the proposal would have a substantially harmful effect on the availability of green space and conflict with Policy SWDP38 of the SWDP and MG2 of the MTNP, which among other things seek to protect green spaces which are not surplus to community need.

Planning Obligations

11. The proposal is supported by an executed Section 106 Agreement that includes affordable housing planning obligations which I have assessed in accordance with Regulation 122(2) of the Community Infrastructure Levy Regulations 2010. An affordable housing planning obligation is necessary pursuant to Policy SWDP15D of the SWDP in order to provide a secure mechanism to ensure that the units would remain affordable. Consequently, any benefits would be appropriately secured.
12. The location of the site and quantum of development means that there would not normally be a requirement to provide affordable housing (whether on site or by way of financial contributions for offsite development). Consequently, the proposal would provide additional affordable housing beyond the identified needs of the area. This coupled with a deviation from the desired tenure split, means the benefits of providing affordable housing at the site would be limited. There is no evidence, through viability assessment or otherwise, demonstrating that deviation is justified.
13. The Council's five year housing land supply position, including figures pursuant to housing delivery test, is not disputed by the appellant. Consequently, the Council's strong position on housing land supply (wherein affordable housing will be delivered as a component of market housing in accordance with development plan policy) means the benefits of providing affordable housing at the site would be further limited.
14. There is no evidence that the same approach to housing land supply generally, is required for the delivery of affordable housing on its own, presumably because affordable housing provision and contributions are intrinsically linked and delivered as fundamental components of sites pursuant to the Council's housing land supply. Consequently, as sites pursuant to the Council's housing land supply come forward for development, they will come forward in the places of identified need with the requisite proportion of affordable housing provision and contributions being secured in line with development plan policies. Therefore, it appears reasonable to conclude that any identified need within the strategic housing market assessments would inform and be met by the delivery of sites pursuant to the Council's housing land supply.

15. Underlining this point of view is the statement at B.38 of the Malvern Hills Strategic Housing Market Assessment 2019, which sets out that there is an affordable newbuild pipeline supply of around 335 dwellings over the relevant five year period. This would make considerable inroads into the affordable housing shortfall and evidences that the Council has effective affordable housing policies in place to help address identified need.
16. The executed Section 106 Agreement also includes open space planning obligations which I have assessed in the same way. It is not clear on what basis the planning obligation is necessary, for example which policy it may be pursuant to. It has been demonstrated under the main issue that the provision of open space would not directly mitigate the loss of green space. In this context, it is not necessary to make a definitive finding on whether the planning obligation meets the requisite tests, as it would not change the conclusion on the main issue or bring about benefits (unlike affordable housing) to weigh in the planning balance.

Other Matters

17. The principle of development is not disputed by the Council, nor are the direct or indirect socio-economic benefits associated with house building. However, given the proposal is not major development, the socio-economic benefits would carry limited weight under the appeal.

Conclusion

18. Even though the proposal would deliver affordable housing, for the reasons given, this would generate limited benefits in its favour. It has not been demonstrated that the loss of green space is surplus to community need and this would generate substantial harm, outweighing the limited benefits of affordable housing therein. The appeal is therefore dismissed.

Liam Page

INSPECTOR