
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/20/3259855

Land served by Brook Close, Kempsey WR5 3LE

- 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 John Mill against the decision of Malvern Hills District Council.
 - The application Ref 19/01299/OUT, dated 23 August 2019, was refused by notice dated 27 April 2020.
 - The development proposed is outline application for the erection of three self-build dwellings.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was made in outline with all matters reserved. The quantum of development is clear from the description of development and all plans relating to those matters reserved have been treated indicatively. The appeal has been dealt with accordingly.
3. Various drafts of planning obligations submitted under the appeal were ultimately flawed insofar as they were not signed and executed, consequently, no finding on them was made and they carried no weight under the appeal.
4. Procedural Guide - Planning Appeals – England 2020 is clear that inspectors will not delay the issue of a decision to wait for an obligation to be executed, unless there are very exceptional circumstances. There is no evidence that very exceptional circumstances exist in this case and the appeal has been dealt with accordingly.

Main Issues

5. The main issues are:
 - (a) whether the proposal accords with the development strategy for the area, in relation to its location relative to development boundaries and the supply of self-build housing; and
 - (b) the effect of the proposal on living conditions of neighbouring occupiers at No. 2 Brook Close, in relation to vehicular noise and disturbance associated with access.

Reasons

Development Strategy

6. The South Worcestershire Development Plan 2016 (SWDP) is part of the adopted development plan for the area. In accordance with the Policies Map associated with the SWDP, it is clear that the principal elements of the site lie beyond defined development boundaries. Accordingly, for all intents and purposes pursuant to assessing tangible effects, the site is located within the countryside. Policy SWDP2 of the SWDP states that the development of dwellings in such locations will be strictly controlled. Going further on this point, I cannot conclude that the site straddles the development boundary as that would imply an equivalent proportion is within and outside of the development boundary. The principal elements and bulk of the proposal would be delivered outside of the development boundary, and it is therefore reasonable to treat it as such for the purposes of any overall assessment.
7. Exceptions to strict controls under SWDP2 of the SWDP include dwellings for rural workers and affordable housing rural exception sites, among other things, and development specifically permitted by other SWDP policies. The SWDP does not treat self-build housing or development on the edge of settlements as an exception for the purposes of controlling development in the countryside. Policy K2 of the Kempsey Neighbourhood Plan 2017 (KNP) reinforces this position in that new housing development outside of the Kempsey village development boundary will be strictly controlled in a similar manner. Consequently, and altogether, the proposal should be assessed as market housing in the countryside for the purposes of applying the development strategy for the area. In this context, the proposal would permanently erode the countryside and generate substantial harm.
8. The National Planning Policy Framework (the Framework) sets out under Paragraph 61 that the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies. This includes those who wish to commission or build their own homes. Footnote 26 sets out that Councils should give enough suitable development permissions to meet the identified demand for such house building, in accordance with the requirements of the Self Build and Custom Housebuilding Act 2015 (as amended). After reviewing how it records self-build housing permissions in line with a recent appeal decision¹, the Council cannot demonstrate a sufficient supply, recording a substantial undersupply.
9. Consequently, the delivery of three self-build dwellings at the site would carry significant weight in addressing the Council's substantial undersupply. However, it is unclear whether piecemeal development of self-build housing in the countryside would generate the same benefits as a more coherent approach, such as delivering self-build as a component of a larger and more comprehensive mixed tenure housing site. In this context, the Council can demonstrate a five year housing land supply and I cannot see why self-build housing cannot come forward as a coherent component of the sites therein; addressing the substantial undersupply in accordance with the development strategy for the area.

¹ APP/H1840/W/19/3241879

10. Accordingly, the substantial undersupply of self-build housing is tempered by the prospect of adequate delivery through the five year housing land supply. Consequently, although there would be limited short term conflict with the aims of the Framework in delivering a sufficient supply of self-build housing, the benefits of the proposal in addressing this limited short term conflict would not outweigh the permanent and substantial harm derived from developing market housing in the countryside.
11. There is an argument to be made that parts of the site relating directly with the former pumping station building and its access could potentially be previously developed land, pursuant to the relevant definition in the Framework. However, it has not been fully demonstrated that the entirety of the site under the proposal was part of the curtilage of the pumping station and should also be taken as previously developed land. Even if it was demonstrated as such, directing development towards previously developed land does not form an exception under either the SWDP or the KNP. It would be an added benefit in favour of proposals that have already been proven fundamentally acceptable and in accordance with the development strategy for the area.
12. This is consistent with Paragraphs 117 and 118 of the Framework, which only encourage the use of previously developed land where it is suitable and part of strategic policies for accommodating objectively assessed needs, and does not mean directing development to sites that are otherwise fundamentally unsuitable just because they are previously developed. A similar logic applies to Policy SWDP 13 of the SWDP, insofar as the efficient use of land needs to fall within the wider development strategy for the area, wherein development in the countryside is strictly controlled.
13. Paragraph 79 of the Framework makes clear that planning policies and decisions should avoid the development of isolated homes in the countryside unless very special circumstances exist. It is a very specific matter within the wider ambit of development in the countryside and should not be conflated with policies (including those within the development plan) relating to residential development in the countryside more broadly. The proposal is for market housing, which is a form of development that does not benefit from countryside exception policies under the development plan. This is independent of Paragraph 79 of the Framework, the issue of isolated homes, and special circumstances therein.
14. Overall, the proposal would not accord with the development strategy for the area, in relation to its location relative to development boundaries and the supply of self-build housing. It would therefore conflict with Policy SWDP2 of the SWDP and Policy K2 of the KNP, which among other things seek to ensure that development in the countryside is strictly controlled.

Living Conditions of Neighbouring Occupiers

15. Accessing the site can only be achieved along the existing narrow access point off of Brook Close. Consequently, even though access is a reserved matter, the fundamental access arrangement associated with the proposal can only be delivered in close proximity to no. 2 Brook Close, and the implications of this need to be considered in principal terms.

16. Clearly, the proximity of the access to the flank elevation of no. 2 Brook Close and the additional movements to and from the site would generate noise and disturbance that is elevated compared to the existing situation. However, the quantum of development would be limited and there is already a turning head at the end of Brook Close and in proximity to no. 2 Brook Close. Consequently, it is highly likely that a degree of background noise and disturbance derived from the movement of vehicles already exists and this is something I witnessed during my site visit. Accordingly, although there would be an increase in noise and disturbance it is unlikely to be significant. Given the outline nature of the application, and the fact that matters relating to landscaping are reserved, I see no reason why suitable boundary treatments could not be explored at a later stage in order to mitigate the limited increase in noise and disturbance.
17. Overall, the effect of the proposal on living conditions of neighbouring occupiers at No. 2 Brook Close, in relation to vehicular noise and disturbance, would not be significant and it is reasonable to conclude that any harm could be mitigated at reserved matters stage. The proposal would therefore accord with Policy SWDP21 of the SWDP, which among things requires development to respect neighbouring amenity.

Other Matters

18. There are references to housing of a self-build nature within SWDP14 of the SWDP and the development plan as a whole is therefore consistent with the Framework in making provision for such housing. On timing, Paragraph 213 of the Framework provides that existing policies should not be considered out of date simply because they were adopted prior to its publication. Even if the development plan was deemed to be out of date as the appellant contends, and Paragraph 11 of the Framework was engaged, the limited quantum of development and relatively limited socio-economic and environmental benefits generated therein would be significantly and demonstrably outweighed by the adverse impacts identified under the main issues.
19. The site's relationship with a category 1 village or whether the proposal is isolated in relation to services are not disputed, but this does not overcome the relationship with the development boundary of the village or implicit harm on the countryside therein. Regarding the SWDP review, as it has not yet gone through examination, policies within it are still subject to change and therefore carry limited weight as a material consideration under this appeal. This is in essence acknowledged by the appellant in referencing unresolved objections. Notwithstanding the Council's administration of the application and any officer recommendations or committee proceedings and any disputes therein, it is not for me to resolve and I have determined the appeal based on the evidence in front of me and latest positions of the parties.

Conclusion

20. Even though the proposal would not harm the living conditions of neighbouring occupiers, it would still conflict with the development strategy for the area and erode the countryside. The appeal is therefore dismissed.

Liam Page

INSPECTOR