The Planning Inspectorate

Appeal Decision

Site visit made on 19 January 2021

by H Porter BA(Hons) MSc Dip IHBC

an Inspector appointed by the Secretary of State

Decision date: 11 February 2021

Appeal Ref: APP/J1860/W/20/3261371
Van Der Hills Nurseries, Land at (OS 7844 3290), B4208 Pendock, GL19 3PG

- 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 Mrs K Hill against the decision of Malvern Hills District Council.
- The application Ref 20/00556/OUT, dated 28 April 2020, was refused by notice dated 3 July 2020.
- The development proposed is outline application for 4 no. dwellings with access from B4208 all other matters reserved.

Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mrs K Hill against Malvern Hills District Council. This application will be the subject of a separate Decision.

Preliminary and procedural matters

3. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. The development plan in this case comprises the South Worcestershire Development Plan, adopted February 2016 (SWDP).

4. The application was made in outline with all matters save for that of access reserved for future consideration. I have considered the appeal on this basis and treated the proposed layout as indicative. In April 2016, the Council had approved outline planning permission on the same site and for the same scheme (15/01346/OUT), hereafter referred to as the 2016 approval.

5. A Unilateral Undertaking dated 12 January 2021 (UU) has been submitted during the course of the appeal, which provides planning obligations relating to financial contributions towards the provision of affordable homes in the event that planning permission is granted.

Main Issues

6. The submission of the UU indicates that the Council's fourth reason for refusing the proposed development has fallen away. The main issues in this appeal are:

- whether the appeal site offers a suitable location for the proposed development having regard to the development plan and settlement strategy policies;
- the effect of the proposed development on the character and appearance of the area; and,
- whether sufficient information has been provided to demonstrate that the proposals would not cause harm in respect of flood risk.

Reasons

Location

7. The appeal concerns a portion of a rectangular-shaped flat paddock situated on the outskirts of Pendock, a small settlement in a wider rural area. Policy SWDP 2 establishes a development strategy and settlement hierarchy, amongst the principles of which is to safeguard and, wherever possible, enhance the open countryside; and to focus development on urban areas and accessible locations. The reasoned justification for Policy SWDP 2 sets out that sites beyond development boundaries are generally less sustainable.

8. The appeal site lies adjacent to, but outside, the development boundary of Pendock, a location defined as being the open countryside under Policy SWDP 2 C. where development is strictly controlled. The appeal scheme does not constitute any of the development listed as an exception or otherwise specifically permitted by other SWDP Policies. Consequently, in failing to accord with Policy SWDP 2, the appeal site is located where it would conflict with the development plan's settlement strategy.

9. Services in Pendock include a small general store with post office, as well as the church and primary school, which are beyond the settlement limits. All of these services and facilities would be within walking distance of the appeal site, but otherwise the surroundings are distinctly rural. Whilst the appeal site is not expressly isolated, it is not situated where travel to gain access for day-to-day needs such as employment, medical, secondary schools or supermarkets could be undertaken other than by relying on journeys by car. Whilst noting that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, the proposal would be located where genuinely sustainable modes of travel are not offered. Consequently, the proposal would fail to promote accessibility to everyday facilities for all, especially those without a car, and be in conflict with Policy SWDP 4.

Character and appearance

10. The appeal site is a paddock, populated with occasional fruit trees and contained by mature hedgerow boundaries. The appeal site is situated behind the short stretch of development fronting the B4208 that is within its settlement boundaries. There is a notable dispersal of built form immediately beyond the developed cluster focused around Pendock Cross, and the local landscape is defined by green fields and mature hedgerows. The detached properties fronting the B4208 turn their backs on the appeal site, which is defined by mature trees and a hedgerow boundary promoting soft, green and undeveloped qualities. Therefore, notwithstanding the site's proximity to housing, ancillary structures associated with the nearby nurseries, and the footway that runs along School Lane, the site's characteristics fit most readily with the undeveloped countryside that surrounds the village.

11. The outline scheme proposes to introduce four dwellings onto the appeal site, which the indicative layout shows would front a shared driveway extending from an existing access off the B4208. Whilst all matters other than access are reserved, the development of up to four two-storey dwellings would represent an urban intrusion into the green and undeveloped appeal site. The hedgerow boundaries to the north-east and School Lane would be retained, and the proposed dwellings would stand in relatively generous plots. Even so, the development would inevitably erode the site's verdant characteristics.

12. The proposal would create a new line of development behind the Pendock Cross frontage and a gradual 'creep' or 'sprawl' of development into the open countryside. The indicative layout shows 'Unit A' would continue the B4208 building line, however, the remainder of the development would likely be orientated towards the shared driveway. Accentuated by the introduction of hard surfacing, footways and parking, the proposed development would be more akin to a suburban cul-de-sac and at odds with the green, undeveloped outskirts of the village's setting.

13. I note that the officer report for the 2016 approval found there would have been no significant adverse environmental effects relating to visual amenity or the rural landscape. However, based on my judgement, interpretation of the development plan policy and assessment of the site-specific circumstances, I am entitled to reach a different conclusion. Even if the proposal would not affect designated heritage assets, for the reasons set out above, I find that the proposed development would fail to respect or complement the character and quality of the area, to safeguard the settlement's wider rural landscape setting or character, and be appropriate in terms of local landscape character. The proposed development would therefore cause harm to the character and appearance of the area and conflict with Policies SWDP 2 F., SWDP 21 and SWDP 25 insofar as these require development to safeguard the character of settlements and integrate with the character of the landscape setting.

Flood Risk

14. Although the appeal site is located in Flood Zone 1, there is information to indicate that the south-east portion of the appeal site is at risk of surface water flooding. The Framework seeks to ensure that inappropriate development in areas at risk of flooding now, or in the future, should be avoided. Paragraph 163 of the Framework establishes that, when determining any planning applications, local planning authorities should ensure that flood risk is not increased elsewhere.

15. The appellant has submitted a revised Flood Risk Assessment[1] (FRA), which identifies the appeal site is at low risk of flooding from various sources but that some surface water flooding does occur around the crossroads and along School Lane, but that surface run-off onto and across the site would be unlikely to occur. The PPG advises that any site-specific FRA should address all possible flood risks. However, the Council does not consider the information within the updated FRA sufficient in respect of whether local ground conditions would limit the possibility of soakaways or infiltration drainage methods.

16. In granting the 2016 approval, the Council had been content to address matters of surface water drainage through conditions. However, based on the

[1] Flood Risk Assessment and Outline Drainage Plan C18633, March 2020

evidence now before me, including the Council's comments that the appeal site itself has been subject to surface water flooding, there is the possibility of the proposed development increasing surface water flood risk either on the site or elsewhere. In light of the uncertainty over flood risk and ground conditions, I do not consider that such matters can be left to be controlled by conditions. Conflict therefore arises with Policies SWDP 28 and 29 and the Framework, which seek to minimise the impacts of all forms of flooding and require the planning system to take full account of flood risk, and that development should be made safe for its lifetime without increasing flood risk elsewhere.

Other considerations and planning balance

17. The proposal would provide several benefits; not least, four open-market dwellings that would contribute to boosting housing supply and the choice of homes in the District; there would be economic benefits associated with the construction phase and, related employment for its duration; and, as future occupiers feed into the local economy, there would be support for the limited existing local services, including, potentially, the primary school. In this respect, the scheme would enhance the vitality of the rural community.

18. However, four is not a great number of additional dwellings and would not make a significant contribution to boosting housing supply even if there is no upper limit. I recognise is local support for the proposal, but the benefits of the proposals are those that could be expected from a well-located, small-scale residential development within the settlement development boundaries. Given the scale of the proposal and that there is no convincing evidence that the local services would be under threat in the absence of the development, the totality of the benefits carry moderate weight in its favour.

19. The appeal scheme would deliver financial contributions towards affordable housing, in accordance with SWDP 15. The planning obligations contained within the UU would be directly related to the development, reasonably related in scale and kind, and necessary to make the development acceptable in planning terms. The UU therefore meets the relevant tests set out in Regulation 122(2) of the Community Infrastructure Regulations 2010. However, satisfying a policy requirement for affordable housing provisions indicates an absence of harm and carries moderate weight as a benefit.

20. I have taken note of the planning history at the appeal site, notably the 2016 approval that granted outline permission for an identical scheme proposing four two-storey dwellings. The Council's handling and assessment of the 2016 approval causes me to sympathise with the appellant's frustrations. However, it is not for me to adjudicate over the behaviour of the Council at the time it granted outline consent when the circumstances have moved on. Crucially, whilst the 2016 approval is a material consideration, it has time-expired and provides no fallback, so carries little weight.

21. In the case of the Brookend appeal decision[2], the Inspector established that the appeal site in that case did not have the characteristics of open countryside, appearing part of a loose spread of development along the lane. This clearly sets the Brookend decision apart in respect of the site-specific circumstances and the effect on character and appearance, as well as surface water flooding. The decision in that appeal therefore have had very little bearing on my own.

[2] APP/J1860/W/15/3135877

22. The proposal would advance an urbanised encroachment into the open countryside that would fail to respect or complement the character and quality of the area. Albeit localised, the proposal would cause harm in respect of character and appearance. Whilst there are some local services that could be reached on foot, the majority of journeys by future occupiers would likely be reliant on the private car. There is insufficient information to demonstrate that there would not be unacceptable flood risk. The environmental harms indicate the proposal would not represent sustainable development, leading to conflict with the overarching sustainable development principles set out in Policy SWDP 1 and the Framework. When considered in the round, the proposal would not be in accordance with the development plan read as a whole. These are factors that attract great weight against granting planning permission.

Conclusion

23. The development plan must be the starting point for my decision making and, in light of the foregoing, it is clear to me that the proposal conflicts with the up-to-date development plan. The material considerations in this particular case are not sufficient to outweigh the conflict with the development plan taken as a whole and do not indicate to me that the development plan should not be followed. Having considered all other matters raised, I therefore conclude that the appeal should be dismissed.

H Porter

INSPECTOR