

## Appeal Decision

Inquiry Held on 9 - 16 March 2021

Site visit made on 16 March 2021

**by H Butcher BSc (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 6 April 2021**

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### **Appeal Ref: APP/J1860/W/19/3242098** **Land South of Bransford Road, Rushwick**

- 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 A Smith of Custom Land Limited against the decision of Malvern Hills District Council.
  - The application Ref 19/00375/OUT, dated 8 March 2019, was refused by notice dated 25 June 2019.
  - The development proposed is the erection of up to 42 dwellings together with vehicular/pedestrian access from Bransford Road; pedestrian/cycle link from Coronation Avenue; Green Infrastructure including open space, landscaping and sustainable drainage; and other related infrastructure.
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### **Decision**

1. The appeal is dismissed.

### **Preliminary Matter**

2. The application was submitted in outline with only access to be determined at this stage. Appearance, landscaping, layout and scale are to be determined at reserved matters stage. I have therefore dealt with the appeal on this basis. A Masterplan<sup>1</sup> showing how the site could be laid out with built development and open spaces has been submitted but this is for illustrative purposes only and has been treated as such.

### **Main Issues**

3. During the inquiry the Council conceded that the second part of its fourth reason for refusal, in respect of Green Infrastructure, could no longer be defended. I have had regard to Policy SWDP 5C, referred to by the Council in respect of this matter, and the evidence before me, and find no reason to conclude that the proposal does not comply with this policy. It is not necessary, therefore, for me to take this matter further.
4. The fifth reason for refusal on the decision notice, relating to safe and suitable access to and from the site and the accessibility of the site generally, has fallen away as the Highway Authority for Worcestershire County Council and Malvern Hills District Council no longer raise an objection to the development on these grounds, subject to suggested conditions and an obligation.

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<sup>1</sup> Rushwick Illustrative Masterplan 216-P-002 Rev. G

5. Before me is a signed and dated Section 106 Unilateral Undertaking. It makes various provisions which include affordable housing, and contributions towards public open space, sport and recreation, and public transport for students to attend secondary school. The Council has confirmed that this overcomes its concerns in respect of reason six for refusal on the Decision Notice. However, as I am dismissing for other reasons, it is not necessary for me to consider this obligation in detail.
6. The main issues are therefore:
  - The effect of the development on the setting and significance of The Willow House (Grade II listed);
  - The effect of the development on the character and appearance of the surrounding area;
  - Whether the site is a suitable location for development having regard to local planning policy, and;
  - Whether or not the Council can demonstrate a 5 year supply of housing land.

## **Reasons**

### *The setting of The Willow House*

7. The Willow House is a grade II Listed building which sits in close proximity to the appeal site, on the edge of Broadmore Green; a small hamlet which historically was distinct from Rushwick. The front elevation of The Willow House has special architectural interest. It has a symmetrical composition and is formed of three storeys and three bays. The sash windows have Georgian proportions and the front entrance door is flanked by cornices and doric pilasters. In stark contrast, the side and rear elevations are largely devoid of fenestration or detailing and originally the property had no windows to any elevations except the front.
8. Its design suggests that the property was built to be seen from the front. The front elevation directly addresses Bransford Road which historically was a main throughfare to Worcester. Historic maps dating from 1885 onwards<sup>2</sup>, at which time The Willow House would have been in-situ, also show that the fields beyond Bransford Road, to the front of, and south-east of the building, had various footpaths crossing them, some of which are still in existence today. These would have afforded longer range views of the front of the property. From there, The Willow House would have been clearly visible, sitting at the edge of Broadmore Green, facing out onto the rural countryside surrounding it, and similar views are still possible today from historic Public Rights of Way. In addition to this, its design is such that The Willow House's main, and, historically, sole aspect over all three floors was across the fields to the front.
9. Broadly speaking, the countryside beyond the section of Bransford Road on which The Willow House is located, where views of and from The Willow House can be taken in, forms part of the setting of this heritage asset, and this includes the appeal site. These views of and from the heritage asset play an important part in how the building is experienced in its setting. They also, in

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<sup>2</sup> Heritage Desk Based Assessment Figures 7, 8, 9, 10, 11, 12

my view, influenced the design of this building. For these reasons they contribute to its significance.

10. There is an historic footpath to the south of the appeal site where clear views of The Willow House can be appreciated, particularly towards the eastern end of this path which is on higher land. The Willow House becomes harder to see on moving to lower ground heading west along this path, but as the land rises up on the other side of the brook, it comes back into view where it can once again be appreciated.
11. The proposal is for up to 42 houses to be constructed on the appeal site. As shown by the illustrative Masterplan<sup>3</sup> views of the listed building from much of the footpath to the south of the appeal site would be obscured, particularly the eastern end where views of the property are clearer, as I observed on my site visit. I note the intention to retain a view from this footpath<sup>4</sup> but this retained view would be towards the lower part of the footpath where views of The Willow House are more restricted due to the surrounding topography. The clearer views of The Willow House towards the eastern end of this footpath, would be largely obscured.
12. This would detract from the significance of The Willow House insofar as its ability to be seen and appreciated from an historic footpath would be impeded. The open rural setting to the front of The Willow House, which includes field boundaries, trees and hedgerows, is integral to its visibility. Therefore, whilst layout is a reserved matter, I do not consider a suitable layout could be achieved which wouldn't, to a harmful degree, obscure views of The Willow House from this footpath, and I have had regard to the Alternative Site Layout put forward by the appellant<sup>5</sup> in reaching this finding.
13. Orchard planting of the appeal site in 1928<sup>6</sup> might have, at that time, partially obscured and/or filtered views of The Willow House, but as shown on the submitted historic maps<sup>7</sup>, the appeal site was largely open as of 1885, 1904, 1955, 1972 and 1994. It is fair to deduce from this, therefore, that for the majority of its life The Willow House has been visible from the footpath to the south of the appeal site.
14. Views from The Willow House would also be greatly impacted upon. Whilst the development could be laid out to maintain an area of open land directly to the front of the asset along the west side of the site, this assumes a relatively narrow corridor of vision from the property. It is much more likely wider views are possible, particularly from the first and second floors, such that a large proportion of the development would be within the field of vision of The Willow House. The result would be the rural aspect to the front of The Willow House, which likely informed its design, would be significantly altered and urbanised resulting in harm to its significance as a heritage asset.
15. Following on from the above point, this change of view also has further implications on the historic landscape setting associated with The Willow House. The Willow House has, as far as the evidence suggests, always been linked to the hamlet of Broadmore Green which was distinct and separate to

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<sup>3</sup> Rushwick Illustrative Masterplan 216-P-002 Rev. G

<sup>4</sup> Nathan Edward's Proof of Evidence Appendix 1, Figure 8

<sup>5</sup> Nathan Edward's Proof of Evidence, Appendix 1, Figure 3

<sup>6</sup> Heritage Desk Based Assessment Figures 9

<sup>7</sup> Heritage Desk Based Assessment Figures 7, 8, 10, 11, 12

Rushwick. From The Willow House, historically, this would have been evident from the open countryside to the front and south-east side of the property which separated the two settlements. Developing the appeal site as proposed would extend Rushwick far closer to and into the setting of The Willow House, blurring the distinction between these two historic settlements. The Willow House would visually begin to be subsumed by Rushwick thereby diminishing its significance as a house designed to be seen on the edge of Broadmore Green.

16. It is true that a recent development at The Orchards has significantly reduced the gap between Rushwick and Broadmore Green making the distinction between these two settlements harder to perceive when travelling along Bransford Road. The various reasons for this development being permitted were explored at the inquiry and are unique to that site. Nevertheless, developing the appeal site would bring Rushwick even closer to The Willow House, particularly on the southern side of Bransford Road. As a result of this, and its positioning in respect of views from and to this asset, it would have far more pronounced impacts in terms of harm to the setting of The Willow House.
17. Therefore, for the reasons given, development of the appeal site at the scale proposed would detract from the special interest and heritage significance of The Willow House and the ability to appreciate its design by impinging on important views within its setting. The harm I have identified could not be mitigated by landscaping which would only soften and screen the development rather than preserve views. Such harm must be given considerable importance and weight.
18. It follows that I also find conflict with Policy SWDP 6 of the South Worcestershire Development Plan (SWDP) which seeks to conserve heritage assets and the historic landscape, and this includes locally distinctive settlement patterns and historic transportation networks. Policy SWDP 21 of the SWDP also requires development to, where appropriate, enhance heritage assets and their settings. The opposite would be true in this case.
19. The Council's heritage position has changed from a previous application made at the appeal site to the position it now adopts in relation to this proposal. However, this inconsistency in advice from the Council, whilst frustrating for the appellant, does not alter my findings in respect of harm to the setting of The Willow House.
20. Any assumed intention on the part of the current owners of The Willow House to cut the building off from its setting by erecting an unauthorised close board fence to the front of the property carries limited weight as this predominantly cuts it off from Bransford Road, not its wider setting as identified above.
21. I have taken into account the Palmer judgement<sup>8</sup>. However, as set out in the Planning (Listed Buildings and Conservation Areas) Act 1990 buildings are listed due to their special architectural or historic interest. As clearly set out above views of and from the heritage asset play an important part in how the building is experienced in its setting, contributing to its significance.
22. I turn now to the National Planning Policy Framework (the Framework). Having regard to paragraph 196, I find the harm to the special interest and

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<sup>8</sup> *Palmer and Herefordshire Council & ANR* [2016] EWCA Civ 1061

significance of The Willow House by virtue of harm to its setting, to be 'less than substantial' and like the Council I would err towards the moderate end of the scale in respect of this harm. The Framework sets out that in such cases this harm should be weighed against the public benefits of the proposal. I return to this balance in my decision later.

### *Character and appearance*

23. The appeal site is a field which adjoins the edge of Rushwick and extends down to Broadmore Green. As set out above, Rushwick and Broadmore Green are two separate settlements which, as shown on the submitted historic maps, have long been separated by open, rural countryside. I have already addressed the issue of coalescence of these two settlements in terms of the impact this would have on the setting of The Willow House. I turn now to the impacts of this on the character and appearance of the area more generally.
24. Presently, when travelling east along Bransford Road, having regard to existing built development including the development at The Orchards, there is a feeling of being either in Broadmore Green, or Rushwick. However, as shown on the illustrative Masterplan<sup>9</sup>, the appeal scheme would mean that from Bransford Road there would be development associated with Broadmore Green on one side, and development associated with Rushwick on the other. There would be even less of an impression of two separate settlements than there currently is now.
25. Given the number of houses proposed, I cannot see that an alternative layout would resolve the increased coalescence of these two settlements that would occur as a result of the proposal. I therefore find harm to the character and appearance of both Broadmore Green and Rushwick in this respect. The fact that there is no formal designation of this land as a 'gap' does not alter my findings in this regard. The development would materially erode the individual identities of each of these settlements with consequent harm to the character and appearance of the countryside here.
26. When travelling east along Bransford Road up to and through Broadmore Green, the appeal site is clearly visible for a significant stretch (some 350m as submitted by Charles Potterton in cross examination and not disputed by the appellant). For users of this road, particularly regular users and local residents, it is a visually prominent site, made all the more prominent by its sloping nature.
27. From this section of Bransford Road, along the eastern edge of the site can be seen the edge of development at Rushwick. However, it is of relatively low density with houses occupying quite generous plots which means the view is softened and interspersed with mature planting. These properties also occupy more level ground than the appeal site which limits the extent of views of the properties here from Bransford Road and softens the built edge to Rushwick which complements its rural setting.
28. The proposed development, in contrast, would be a far denser residential development than that which it would directly abut to the east, and would cover much of the sloping part of the site. The effect would be that of multiple layers of housing extending up the slope, which would be clearly visible along

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<sup>9</sup> Rushwick Illustrative Masterplan 216-P-002 Rev. G

the stretch of Bransford Road referred to above. Landscaping as shown on the illustrative Masterplan<sup>10</sup> would do little to soften the development as it would be mostly confined to the lower parts of the site. I am also conscious of the requirement to provide a Local Area of Play (as per Policy SWDP 39 of the SWDP) which would further reduce landscaping opportunities on-site, albeit to a limited degree.

29. The current soft edge of Rushwick here would therefore be lost, to be replaced with a harder, more heavily urbanised edge, whichever way the site was laid out, and this would be materially harmful to the character and appearance of the area. The Orchards development is of a similar density to that proposed. However, that site is not as visually prominent as there are not such long views of it along Bransford Road as there are of the appeal site. It does not, therefore, alter my findings above.
30. For all of the above reasons I find harm to the character and appearance of the area, and as a result conflict with Policies SWDP 21 and SWDP 25 of the SWDP which require new development to complement the character of the area, respond to surrounding buildings and integrate effectively with its surroundings

#### *Suitable location*

31. The appeal site sits adjacent to, but outside of the development boundary and therefore falls within open countryside as defined by the development plan. Policy SWDP 2 seeks to implement various principles which underpin the District's Development Strategy and site allocations, including the need to safeguard the open countryside and focus most development in urban areas. To this end, Policy SWDP 2C sets out that, in the open countryside, development will be strictly controlled and will be limited to certain exceptions, none of which apply in this case. There is no dispute between the parties that the development conflicts with Policy SWDP 2.

#### *Five Year Housing Land Supply*

32. Paragraph 73 of the Framework clearly sets out the requirement to annually identify and update a supply of specific deliverable sites sufficient to provide a minimum of five years' worth of housing against the Council's housing requirement set out in adopted strategic policies, or against their local housing need where the strategic policies are more than five years old. However, a strict following of a timetable of annual reviews set by the Council, which do not tally with the five year anniversary of adopted strategic policies, can lead to a situation such as we find ourselves in, in this appeal.
33. In this case, the SWDP is more than five years old. Its policies have been reviewed and found to require updating. Therefore, in terms of paragraph 73 of the Framework, and for the purposes of this appeal, we are clearly looking for a housing land supply figure against the Council's local housing need as calculated by the standard method. However, the Council has not calculated this yet – that is planned for later in the year.
34. The appeal falls to be determined now. As per paragraph 73 of the Framework, it would not be correct to rely on the now more than five-years old adopted strategic policies. The Council accepted at the inquiry that if local housing need using the standard method was applied, as things currently stand, then it

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<sup>10</sup> Rushwick Illustrative Masterplan 216-P-002 Rev. G



cannot demonstrate a five year supply of housing land. Therefore, having regard to paragraph 73 of the Framework, and in the absence of current housing land supply figures on the part of the Council, I find that it cannot demonstrate a five year supply of housing sites. The figures I have before me, as calculated using the standard method by the appellant are, in a worst-case scenario, 3.87 years.

35. The Council makes the point that, as and when supply is updated, it will be done on a plan-wide basis across the South Worcestershire Councils, rather than looking just at Malvern Hills District Council. Be that as it may, such an approach would need to be established through the plan making process and set out in strategic policies, which are not before me for the purposes of this appeal. I have also had regard to the Housing Delivery Test 2020 but this does not alter my findings above.

*Other matter*

36. The suitability of Rushwick for expansion was discussed at the Inquiry. Masterplanning is clearly underway as part of the Local Plan Review but it is still at a very early stage. It therefore carries limited weight in the consideration of this appeal which has been determined on its own merits.

**Overall Planning Balance**

*Heritage balance*

37. The proposal would bring about public benefits. The provision of new housing, including a percentage of affordable housing, is a significant benefit at this time of pressing need. There would be short-term benefits associated with the creation of construction jobs, and longer-term benefits in terms of additional expenditure and use of services in the local area both of which attract modest weight. Such benefits are also likely to be realised relatively quickly due to the modest size of the development.
38. There would also be a modest enhancement of the setting of the Listed building by relocating the existing access to the fishing lake away from The Willow House, infilling the hedgerow here, and moving the carpark slightly further south-east. Further enhancements to biodiversity, hedgerows and additional landscaping features and Green Infrastructure within the site would constitute further modest benefits.
39. It has been put to me that there may also be a benefit in terms of opening up part of the site to the wider public for recreational purposes. However, there is very little to stop people walking around the pond as existing and they may, in fact, be discouraged by new housing here. Furthermore, there are far more extensive Public Rights Of Way in the immediate area for recreational use. This would therefore attract minimal weight in my balancing exercise.
40. Increased Council Tax income, or contributions to the Community Infrastructure Levy, are neutral factors as they merely mitigate the impact of new housing on the community and public services. The New Homes Bonus, however, attracts modest weight as a benefit.
41. That the site is close to adjacent settlements and therefore local services merely indicates an absence of harm in this respect and is, consequently, a neutral factor, carrying no positive weight. Improvements to footways are also

cited but there is no substantive evidence of this before me nor is it clear how this would be secured.

42. Retention of the existing fishing facilities, although put forward as a benefit, is another neutral point. From the evidence before me, these facilities would remain with or without the development. Other points made by the appellant which carry no positive weight include the detailed design of the development to meet required standards, and details relating to construction methods employed.
43. Notwithstanding the individual weight I have attributed to the above benefits, their collective weight would be significant. However, they are not collectively sufficient to outbalance the identified 'less than substantial harm' to the significance of The Willow House given that such harm is to be given considerable importance and weight. In undertaking this balance I have taken into account the scale of the development proposed, which is modest at 42 houses, and taken a worst-case scenario of a housing land supply figure of 3.87 years, as put to me by the appellant.

*Planning balance*

44. The harm I have identified to the significance of The Willow House is not outweighed by public benefits. I have also found harm to the character and appearance of the area and harm in terms of a policy conflict with Policy SWDP 2 which seeks to exert strict control over development in the countryside.
45. Given that I have found that the Council cannot demonstrate a five-year supply of deliverable housing sites paragraph 11d) of the Framework is engaged and the policies most important for determining the application are to be considered as out-of-date. However, in accordance with para 11d i) and footnote 6 of the Framework it is then clear that permission should not be granted as the application of policies in the Framework that protect, of particular note for this appeal, designated heritage assets, provide a clear reason for refusing the development proposed.
46. Consequently, having regard to the development plan as a whole and all material considerations advanced in this case, the appeal is dismissed.

*Hayley Butcher*

INSPECTOR



## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Sarah Clover of Counsel	Instructed by the Malvern Hills District Council
She called Charles Potterton BA DipLA	Chartered Landscape Architect
Sarah Lowe BSc(Hons) Dip(Hons) Arch	Senior Conservation Officer for Malvern Hills District Council
Timothy John Roberts BA(Hons) MRTPI	of Tim Roberts Planning
Simon Rowles MA Spatial Planning MRTPI	Senior Planning Officer at Malvern Hills District Council

### FOR THE APPELLANT:

Thea Osmond-Smith of Counsel	Instructed by David Barnes
She called Nathan Edwards BA (Hons) Dipla	Director of Urban Wilderness Limited
Robert Bourne BA (Hons) MA, BA(Hons) MCIfA	Managing Director of Orion Heritage Limited
David Barnes MBA BSc (Hons) Dip TP MRTPI	Director of Star Planning and Development Limited

### INTERESTED PERSONS:

Reiss Sadler	Wychavon
Lucy Kendall	Malvern Hills District Council
Duncan Rudge	Malvern Hills District Council
Jason Tait	Planning Prospects
Nick Harman	Pegasus Group
Greta Woolley	Local resident
Vicky Bilton	Local resident
Les Greenwood	Local resident
Cameron Austin-Fell	Local resident
Chris Dobbs	Local resident
Clare Bull	Local resident

**DOCUMENTS submitted at the Inquiry**

- 1 Appeal Decision APP/G1630/W/20/3256319
- 2 *Suffolk Coastal District Council v Hopkins Homes Ltd and Richborough Estates Partnership LLP & Cheshire East Borough Council v SSCLG* [2016] EWCA Civ 168
- 3 *Palmer and Herefordshire Council & ANR* [2016] EWCA Civ 1061
- 4 The Hedgerows Regulations 1997
- 5 Email and attachment about Local Area of Play
- 6 Certified copy Section 106 UU