



Appeal Decision

Site visit made on 2 June 2021

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 September 2021

Appeal Ref: APP/J1860/W/20/3263712

Homestead, Halfkey Road, Malvern WR14 1UL

- 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 G Chatterton against the decision of Malvern Hills District Council.
 - The application Ref 20/00251/OUT, dated 20 February 2020, was refused by notice dated 8 September 2020.
 - The development proposed is outline application for the erection of 4no. dwellings with access from Halfkey Road. All other matters reserved.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was submitted in outline with only access to be determined at this stage. I have therefore dealt with the appeal on this basis. A drawing showing how the site could be built based on the proposed quantum of development and a possible layout has been submitted but, whilst informative, this is for illustrative purposes only and has been treated as such.
3. Since the appeal was lodged a revised version of the National Planning Policy Framework, 2021 ('the Framework, 2021') has been released, the main parties have been consulted on this and I have taken this into account where relevant to my Decision.

Background and Main Issues

4. To address the Council's refusal reason 4, the appellant has provided an amended site plan (Drawing number 2049 3000A). This includes visibility splays to a distance of 43m metres to the west along Halfkey Road and up to the junction with Leigh Sinton Road to the east. In light of the amended plan and other mitigating factors, the Council is no longer pursuing refusal reason 4, subject to conditions relating to the provision of visibility splays and the surfacing of the access if the appeal were to succeed. I have also considered this and on the information before me, I have no reason to take a contrary view.
5. Accordingly, the main issues are: Whether the site is in a suitable location for housing having regard to local and national planning policy; the effect of the proposal on the character and appearance of the area; whether the proposal

would offer a satisfactory quality of development for its occupiers; and the effect of the proposal on protected species.

Reasons

Whether the site is a suitable location for housing

6. The appeal site is located outside of but adjacent to the defined development boundary of Malvern. Therefore, in accordance with Policy SWDP 2 (C) of the South Worcestershire Development Plan ('SWDP') the appeal site is classed as being within open countryside where development is strictly controlled, and only defined exemptions are allowed. The proposal does not fall into any of those exemptions.
7. However, under Paragraph 4, the reasoned justification to Policy SWDP 2 advises, that the high quality of the open countryside is an important attribute of the area and that sites beyond development boundaries generally are less sustainable as access to local services tends to be poorer and it is, therefore, appropriate that development in the open countryside is restricted.
8. In this case, the appeal site is located at the end of existing development along Halfkey Road and comprises a site which is already developed and occupied by a two-storey detached dwelling, sizeable glasshouse, and an outbuilding. The site is also relatively contained by the highway along its frontage and a recently developed site to the west, with some low boundary treatments along its other sides.
9. Consequently, on the ground, the appeal site has a stronger physical relationship to the built development along Halfkey Road, than the open countryside which includes the surrounding open fields to the north and east of the site.
10. In terms of accessibility, Malvern is categorised as a Main Town under Policy SWDP 2 of the SWDP and is identified as having a range of local services and employment opportunities. In particular, based on the information before me and my visit, bus stops, shops, a school and other community facilities are within reasonable walking distance of the site. In reaching this conclusion, I note that Paragraph 4.4 of Manual for Streets, identifies that areas most conducive to walking are where there are a range of facilities within a 10-minute walk (800m).
11. Paragraph 79 of the Framework, 2021 states that housing in rural areas should be located where it will enhance or maintain the vitality of rural communities. The development would be consistent with this objective.
12. The benefits derived from three additional dwellings would make a small but positive contribution to the housing land supply and to a limited extent supports Criterion A (ii)¹ of Policy SWDP 2 of the SWDP. Therefore, this attracts some weight in favour of the proposal.
13. Policy SWDP 2 of the SWDP expressly states that part of the development strategy is to encourage the effective use and re-use of accessible, available and environmentally acceptable brownfield land. Criterion G also specifically states that encouragement will be given to the redevelopment of brownfield

¹ ii. Provide for and facilitate the delivery of sufficient housing to meet objectively assessed needs to 2030

sites. As concluded above, the site is in an accessible location and there is no clear evidence that it is not available or not environmentally acceptable. Accordingly, the development would be consistent with this principle of Policy SWDP 2 of the SWDP and similar objectives of the Framework, 2021. As such, this attracts some weight in favour of the development.

14. Based on the above reasons, the proposal would accord with Policy SWDP 4 of the SWDP, which amongst other things supports developments that minimise demand for travel and offer genuinely sustainable travel choices.
15. However, whilst the proposal would be in conflict with Policy SWDP 2 (C) of the SWDP, this is outweighed by the above considerations which I have identified. Accordingly, I conclude that the appeal site is in a suitable location for housing.

Character and appearance

16. The appeal site is located close to the junction between Halfkey Road and Leigh Sinton Road. This is in an elevated position in relation to its surroundings and the site is fairly open because of the limited boundary treatments around it. Consequently, the appeal site occupies a prominent location and is clearly visible to users of Leigh Sinton Road travelling in a northerly direction out of the settlement and users of Public Right of Way ('PRoW') 541 which crosses the fields to the east and north of the site.
17. Because the appeal site is already developed it makes a limited contribution to the landscape character of this part of the district which is characterised as 'Principal Timbered Farmlands'. Nevertheless, the site is sparsely developed relative to the development to the west of it and therefore provides a relatively soft and open edge to the settlement. Most notably, it serves as a transition site between the built extent of the settlement and the more open countryside beyond this. In particular, these aspects of the site are notable when traveling north along Leigh Sinton Road and in views from Halfkey Road and the PRoW 541 and positively contribute to the rural character and appearance of the area.
18. In contrast, the quantum of four dwellings would represent a far intensive development than that which presently exists at the site. The extent of which would be visible from along the aforementioned roads and PRoW.
19. Such significant encroachment and urbanisation of the site would erode its role as a transition site. Notwithstanding that landscaping is a reserved matter, given the quantum of development proposed there is likely to be limited scope available on site for any effective landscaping, to assist in assimilating this extent of development into the wider landscape to the north and east.
20. In particular, the site falls within the Significant Gap, as per Policy SWDP 2 (D) of the SWDP. Therefore, despite already being developed, the quantum of proposed development would result in an appreciable erosion of the sites relatively open character and appearance. This would conflict with the aims of Significant Gaps which includes retaining openness and protecting the character and setting of settlements.
21. Consequently, the current soft and open edge which the site affords the settlement would be lost, to be replaced with a harder, more heavily urbanised edge, irrespective of the proposed average net density or how the site was laid

out, and this would be materially harmful to the character and appearance of the area.

22. In reaching the above conclusion, I am mindful that the development on the adjoining site also comprises four dwellings and despite being larger in area and occupying a less visually prominent site, it is still dominated by built development.
23. For the above reasons, the proposal would be contrary to Policy SWDP 2 (D) of the SWDP. I also find conflict with Policies SWDP 21 B(ii) and (xii) and SWDP 25 of the SWDP and Policies MD1 and MD2 of the Malvern Hills Neighbourhood Plan. Together, these policies require new development to be of high-quality design which complements the character of the area and integrates effectively with its surroundings. Accordingly, I also find conflict with Policy SWDP 1 of the SWDP, which sets out a presumption in favour of sustainable development, subject to proposals being in accordance with policies in the SWDP.
24. The above policies are also broadly consistent with the Framework, 2021, insofar as one of its fundamental aims is to create high quality, beautiful and sustainable buildings and places. Furthermore, whilst there is support in the Framework, 2021 for development that makes efficient use of land, this needs to take account of the desirability of maintaining an area's prevailing character and setting. As such, I attach great weight to the harm I have identified.

Living conditions

25. The Council has expressed concerns about the proposed layout failing to meet its space standards and the limited level of amenity space afforded for each dwelling, and the effects of these factors on the quality of the proposed development for its occupants. Nevertheless, the submitted layout is for illustrative purposes only. Therefore, such matters of detailed design, would be addressed at reserved matters stage if the appeal were to succeed.
26. Accordingly, the effects of the layout on the overall quality of the development is not for determination. Therefore, at this stage, in respect of this specific matter, I cannot conclude that the proposal conflicts with the design aims of Policy SWDP 21 of the SWDP and Policies MD1 and MD2 of the Malvern Hills Neighbourhood Plan.

Protected species

27. The pond within the appeal site was found to be dry during various visits in March, May, and June 2020. Any associated ditches were also dry. Therefore, the pond is unsuitable as a breeding site for great crested newts ('GCNs'). As such, there is unlikely to be significant impacts on breeding GCNs from the development.
28. Nevertheless, the Council's ecologist has identified suitable places for shelter on site for both GCNs and other amphibians. Therefore, a precautionary working methods and reasonable avoidance measures approach should be applied if the site is developed.
29. Surveys undertaken in May and June 2020 confirm that The Homestead is used as a day roost by individual common pipistrelle and brown long-eared bats. The proposals include the demolition of The Homestead and consequently the prior acquisition of a bat licence from Natural England ('NE') is required. To apply for

- a NE Licence full planning permission must be in place and all relevant (bat) conditions discharged.
30. In the absence of a License, I am required by Regulation 9(3) of the Habitat Regulations to have regard to the requirements of the Habitats Directive in the determination of this appeal. In effect I am required to consider whether there would be a reasonable prospect of a licence being granted by applying the three tests (derogation tests). These are (a) Preserving public health or public safety or other imperative reasons of overriding public interest; (b) There is no satisfactory alternative; and (c) The action will not be detrimental to maintaining the population of the species concerned at a favourable conservation status in its natural range.
31. In respect of the second test, because the existing dwelling is located towards the south east corner of the appeal site, and in the absence of any clear evidence to the contrary, I am not persuaded that its siting precludes the option to develop around it. As such, I am not convinced that there is no satisfactory alternative other than the demolition of the dwelling on site. I, therefore, cannot be certain that all other reasonable alternative ways of avoiding or minimising impacts on the protected species have been discounted.
32. Therefore, despite there being opportunities to secure appropriate mitigation, compensation, and enhancement, it has not been substantiated that there is no satisfactory alternative to the development which might avoid the harm to bats from the identified loss of the existing roosts. Consequently, the second test is unlikely to be met.
33. As such, even if I were to find in favour of the appellant on the other two tests, as NE can only issue a Licence if all three tests are met, in light of my findings above I consider it is unlikely that NE would issue a Licence. As such, overall, the appeal proposal fails to meet the derogation tests and I conclude that it would have an adverse effect on protected species. This conflicts with Policy SWDP 22 of the SWDP, which amongst other things, seeks to ensure that developments do not compromise the favourable conservation status of European or nationally protected species or habitats will not be permitted. This Policy is consistent with Paragraph 180 (a) of the Framework, 2021 and therefore carries significant weight.

Planning Balance and Conclusion

34. The appellant has provided evidence indicating that earlier this year the Council could not demonstrate a 5-year housing land supply. This is based on an Inspector determining another appeal in the area and concluding that the Council had a 3.87-year housing land supply. Notwithstanding this, the Council maintains it has a 5-year housing land supply.
35. If I were to accept the appellant's position, Paragraph 11(d) of the Framework, 2021 indicates in such circumstances the policies of most importance for determining the application are out-of-date, and the presumption in favour of sustainable development applies. This means granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.

36. The provision of an additional three dwellings that make use of previously developed land in an accessible location and contribute to the overall housing supply are supported by the Framework, 2021. However, these benefits and any associated economic and social benefits accrued from the provision of three additional dwellings would be modest and therefore this attracts moderate weight.
37. On the other hand, I have found that the quantum of development proposed would harm the character and appearance of the area. I have also found that the proposal would have an adverse effect on protected species. Given my findings on these matters and having regard to the Framework, 2021, I attach significant weight to such harm.
38. As such, even if I were to accept the appellant's position in respect of the 5-year housing land supply, the adverse impacts of allowing the development would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework, 2021, taken as a whole. I, therefore, conclude that the appeal should be dismissed.

M Aqbal

INSPECTOR