



Appeal Decision

Site visit made on 2 November 2021

by Gareth W Thomas BSc (Hons) MSc (Dist) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 December 2021

Appeal Ref: APP/W1850/W/20/3262388

Glebe Land, Millstream Gardens, Eardisley, Herefordshire, HR3 6NR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission
 - The appeal is made by Hereford Diocesan Board of Finance against Herefordshire Council.
 - The application Ref P193762/O is dated 24 October 2019.
 - The development proposed is for outline planning permission for the erection of up to 18 dwellings (to include 6 affordable homes), associated open space, landscaping and infrastructure, including access road and surface water balancing pond.
-

Decision

1. The appeal is allowed and outline planning permission is granted for the erection of up to 18 dwellings (to include 6 affordable homes), associated open space, landscaping and infrastructure, including access road and surface water balancing pond at Glebe Land, Eardisley in accordance with the terms of the application, Ref P193762/O, dated 24 October 2019, subject to the conditions set out in the Schedule.

Applications for costs

2. An application for an award of costs has been made by the Hereford Diocesan Board of Finance against Herefordshire Council. This application is the subject of a separate decision.

Preliminary Matters

3. The application was submitted in outline form with all matters reserved for future approval. Although a draft layout of the proposed development was submitted with the application, this was submitted on the basis of illustrative material to aid a general understanding of the development opportunity at the appeal site, and I have determined the appeal accordingly.
4. The appeal results from the failure of the Council to determine the planning application within the statutory period. There was a considerable degree of agreement between the parties on most of the matters of early contention. The Council prepared a helpful statement to clarify the background to this appeal proposal and to explain the latest position of the Council in relation to the main issues of this appeal. By the same token, the appellants also provided a helpful explanation of their position in relation to the acceptability of the planning obligation requirements of the Council. I deal with this issue later in my decision.

5. The appeal site located off a small cul-de-sac and surrounded by hedgerows and mature trees is an allocated housing site within the made Eardisley Neighbourhood Development Plan whilst the appeal scheme would be at a quantum of development that is consistent with Policy H4 of that Plan. Furthermore, Eardisley is a village where proportionate housing development will be supported under Policy RA2 of the Herefordshire Core Strategy (CS).
6. The Council is satisfied that the principle of residential development is acceptable and that the quantum of housing, including the level of affordable housing provision would be policy compliant. It also considers that there are no outstanding concerns relating to living conditions (described by the Council in terms of amenity), highways, landscape, ecology and surface water disposal. From the evidence, I have no reason to disagree with the shared position of the main parties on these matters.
7. In terms of the effects of the proposed development on heritage assets, the Council confirms that there would be no adverse impacts arising upon either the designated Eardisley Conservation Area (ECA) or nearby listed buildings. From the evidence, I have no reason to disagree with the Council's assessments. Accordingly, I am satisfied that my duties under sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 are discharged.
8. The remaining single concern relates to the level of section 106 contributions being sought by the Council to offset the impacts that would arise from the development, specifically upon the healthcare provision of the Wye Valley NHS Trust's hospital at Hereford. Consequently, the main issue in this appeal is whether the requested section 106 financial contribution towards health care provision is necessary to make the development acceptable.

Reasons

9. The single point of contention would require the appellants to provide a financial contribution towards the costs of additional hospital interventions in Hereford that would arise from projected population growth. The contribution sought would assist with providing capacity for the Wye Valley NHS Trust to maintain service delivery during the first year of occupation of each unit of the accommodation of the appeal development. According to the Council, this is considered necessary since the Trust will not receive the full funding required to meet the healthcare demand due to the baseline rules on emergency funding and there is no mechanism for the Trust to recover these costs retrospectively in subsequent years. Based on an agreed formula between the Trust and the Council, this would total just under £12k.
10. My attention has been drawn to an appeal decision¹ for some 625 new homes in Ledbury where the Secretary of State granted planning permission subject to a section 106 Obligation, which amongst other things, required the payment of a contribution towards the Wye Valley NHS Trust based on the same formula as in this appeal. The Secretary of State found that the contribution was necessary to make the development acceptable in planning terms, was directly related to the development and would be fair and reasonable in terms of scale and kind. This is an important material consideration in the present appeal.

¹ APP/W1850/W/20/3244410 – Bloor Homes Western at land north of Viaduct, adjacent to Orchard Business Park, Ledbury dated 15 March 2021

11. The appellants claim that there is a fundamental difference between these appeals. They argue that the Ledbury appeal scheme was unplanned and speculative, unlike the current appeal scheme that involves an allocated housing site, which formed part of a planned approach both at the strategic and neighbourhood level.
12. However, notwithstanding the NHS Trust's reference to the need to cater for "unanticipated additional growth", there is nothing in Policy SC1 of the CS that differentiates between community needs arising from windfall housing sites and those that are allocated as part of the development plan. Neither am I convinced that Herefordshire's approach should be hampered by the approach adopted by Powys Council as the neighbouring local planning authority. This is a matter that ought to have been addressed as part of the development plan under the duty to cooperate. By the same token, it is of no consequence to Herefordshire and this appeal whether Gloucestershire councils follow a similar planning policy line.
13. The Council's Planning Obligations Supplementary Planning Document (SPD) sets out a formula-based approach for the type and scale of contributions that would become payable although does not explain how any formula would be applied for hospital services. However, it also emphasises that the SPD provides a "quick reference tool...of the contributions expected from particular types of development...Not all types of contributions are included in this summary; others may apply on a site-by-site basis...". Clearly, the Council and the NHS Trust have developed the formula since publication of the SPD, which was the subject of consideration at the Ledbury appeal, and which was supported by the Secretary of State.
14. The appellants submitted a signed Unilateral Undertaking (UU) under section 106 of the Town and Country Planning Act 1990 (as amended). It includes obligations to make financial contributions towards education, future management of open space facilities, provision of waste recycling bins and footpath improvements as well as the provision of six affordable housing units. In addition, a commitment to pay a contribution towards the Wye Valley NHS Trust is included but subject to a 'blue pencil clause' that, in the event of my finding that this obligation is not necessary to make the development acceptable, it would be struck out of the UU.
15. There is no conflict between the parties in relation to the other obligations and I have no reason to disagree with their respective opinions that they would comply with the policy test set out in the National Planning Policy Framework ('the Framework') and the statutory test in the Community Infrastructure Levy ('CIL') Regulations 2010 (as amended).
16. Having reached my conclusion that the requested contribution towards Hereford Hospital would not be unreasonable despite the appellants' strong misgivings, I would agree with my colleague Inspector's reasoning and recommendations to the Secretary of State in the Ledbury appeal and that the contribution is also necessary in this case to make the development acceptable in planning terms. In the absence of the contribution, there would be an unacceptable strain placed on healthcare services arising from the population increase from the proposed development. I am also conscious of the cumulative impacts that will arise alongside other developments which, in

combination, will generate increased demands that would be likely to also impact on the delivery of healthcare adversely.

17. I therefore find that the contribution is directly related to the development and is fair and reasonable in terms of scale and kind and thus meet the Framework and CIL Regulations 122 tests. The covenant in the UU should therefore remain in accordance with the requirements of CS Policies SC1 and ID1 that seeks appropriate level of contributions towards the provision of necessary infrastructure.

Conditions

18. A list of conditions has been submitted by the Council and reviewed by the appellants. I have assessed these conditions against the advice contained in the Framework and the Government's National Planning Practice Guidance and have amended some to aid clarity and precision and omitted others as they are unnecessary.
19. In addition to the standard outline conditions, a condition specifying the approved plan is included to define the extent of the site and to define the permission. I have included a condition that sets out the arrangements for the delivery of the open market and affordable housing in terms of mix on site in the interests of achieving a balanced community. A condition is included setting out a requirement to agree site levels so that the character and appearance of the area is protected.
20. I have included a condition that requires the open space and play areas to be agreed to ensure that adequate provision is made in line with the Council's policies. I would agree with the appellants that the suggested drainage conditions are unnecessarily complex and I have included simpler worded conditions for surface water and foul water disposal that would fulfil the same purpose and protect the amenity of the area and avoid pollution. However, a further condition is included to ensure management of the balancing pond.
21. A condition requiring the submission and agreement of CEMP and its compliance therewith as development takes place is necessary to protect wildlife habitats. A condition is included requiring the submission and approval of details for biodiversity net gain and its subsequent implementation in accordance with the approved details to comply with the Council's policies on nature conservation and protection of dark skies.
22. Conditions are included requiring the submission and approval by the Council together with subsequent implementation of both tree protection measures and landscaping and its management to protect the character and appearance of the area. A condition is included requiring the submission and agreement by the Council of cycle parking facilities together with its implementation in order to aid sustainable means of travel. In addition, conditions are included to encourage water efficiency and use of electric cars to aid sustainability.
23. I have not included the following suggested conditions, with reasons in brackets: access details (as this is a reserved matter); phasing controls (as this is a modest development scheme); broadband provision (lack of policy basis); turning head requirements to ensure that refuse vehicles can manoeuvre (this is covered by reserved matters – means of access).

Conclusion

24. Having regard to the above reasons, I conclude that this appeal should be allowed, and outline planning permission granted.

Gareth W Thomas

INSPECTOR

SCHEDULE OF CONDITIONS:

1. No part of the development hereby approved shall commence until details of all reserved matters, including layout, means of access, appearance, scale, and landscaping have been submitted to and approved in writing by the local planning authority.
2. Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
3. The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
4. The development hereby permitted shall be carried out in accordance with the following approved plan: ALP.001A.
5. The reserved matters application submitted pursuant to Condition 1 shall be accompanied by details of a scheme for the delivery of the open market and affordable housing. This scheme relating to open market dwellings shall comprise a schedule outlining the number of 2, 3 and 4 (+) bed dwellings; the overall mix being in general accord with the Council's Local Housing Market Assessment (or any successor document, adopted for these purposes by the local planning authority).
6. The reserved matters submission shall include detailed plans for the provision for open space and play areas, to be set out in accordance with the standards adopted by the local planning authority. The agreed scheme and facilities shall be provided prior to first occupation of any dwelling on site.
7. No development shall take place until full details of the finished levels, above ordnance datum, of the ground floors of the proposed buildings, in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.
8. Prior to commencement of any works on site details of the method of foul and surface water disposal shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in full and thereafter retained for the duration of development.
9. Prior to commencement of any works on site, details of the maintenance & management of both the surface water sustainable drainage scheme and any receiving system shall be submitted to and approved in writing by the local planning authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details. These should include a plan which covers the lifetime of the development, the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the surface water drainage scheme throughout its lifetime.
10. Before any work, including any site clearance or demolition begin, equipment or materials moved on to site, a Construction Environmental Management Plan (CEMP), including a full Ecological Working Method Statement based on

current-valid ecological surveys, shall be supplied to the local planning authority for written approval. The approved CEMP shall be implemented and remain in place until all work is complete on site and all equipment and spare materials have finally been removed.

11. Prior to any construction, a detailed scheme and annotated location plan for proposed biodiversity net gain enhancement features including provision for bat roosting and hibernation, bird nesting, hedgehog homes and movement corridors across the site and pollinating insect 'nesting' should be supplied to and acknowledged by the local authority and then implemented in full. The approved scheme shall be maintained hereafter as approved unless otherwise agreed in writing by the local planning authority. No external lighting should illuminate any biodiversity net gain feature or adjacent habitat.
12. No development, including demolition works shall be commenced on site or site huts, machinery or materials brought onto the site, before adequate measures have been taken to prevent damage to those trees/hedgerows that are to be retained. Measures to protect those trees/hedgerows must include:
 - Root Protection Areas for each hedgerow/tree/group of trees must be defined in accordance with BS5837:2012 – Trees in Relation to Design, Demolition and Construction.
 - Temporary protective fencing, of a type and form agreed in writing with the Local Planning Authority must be erected around each hedgerow, tree or group of trees. The fencing must be at least 1.25 metres high and erected to encompass the whole of the Root Protection Areas for each hedgerow/tree/group of trees.
 - No excavations, site works or trenching shall take place, no soil, waste or deleterious materials shall be deposited and no site huts, vehicles, machinery, fuel, construction materials or equipment shall be sited within the Root Protection Areas for any hedgerow/tree/group of trees without the prior written consent of the Local Planning Authority.
 - No burning of any materials shall take place within 10 metres of the furthest extent of any hedgerow or the crown spread of any tree/group of trees to be retained.
 - There shall be no alteration of soil levels within the Root Protection Areas of any hedgerow/tree/group of trees to be retained.
13. No development shall commence until there shall have been submitted to and approved in writing by the local planning authority a scheme of hard and soft landscaping. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development.
14. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

15. Prior to the first occupation of the dwelling to which it relates a scheme for the provision of covered and secure cycle parking within the curtilage of each dwelling shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details. The cycle parking shall be installed and made available for use prior to occupation of the dwelling to which it relates and shall thereafter be retained for such use.
16. Prior to the first occupation of the dwelling to which it relates a scheme to enable the charging of plug in and other ultra-low emission vehicles (e.g. provision of electric sockets) to serve the occupants shall be submitted to and approved in writing by the local planning authority. The approved details shall be provided prior to the first occupation of the dwelling to which it relates and retained as such thereafter.