



Appeal Decision

Site visit made on 15 March 2022

by Alexander O'Doherty LLB (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 June 2022

Appeal Ref: APP/D1835/W/21/3280719

Land to the north of 15 Darwin Avenue, Worcester WR5 1SP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Bromford Developments Ltd against the decision of Worcester City Council.
 - The application Ref 20/00632/FUL, dated 14 August 2020, was refused by notice dated 24 June 2021.
 - The development proposed is described as, "Demolition of three existing dwellings and erection of 50 dwellings, access, public open space and associated development including re-routing of public footpath".
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether or not exceptional circumstances demonstrate that the proposed development of Green Space should be permitted.

Reasons

3. The appeal site comprises approximately 1.78 hectares of land off Darwin Avenue, in Worcester. The site largely consists of grassland, mature hedgerow, and trees. Also included within the site are 3 existing dwellings, which are proposed to be demolished.
4. Part of the site is allocated for residential development under Policy SWDP 43/1 of the South Worcestershire Development Plan (adopted 2016) (SWDP). The site also includes land that is designated as Green Space through Policy SWDP 38 of the SWDP. Existing residential development is present to the south of the site. At the time of my site visit further residential development was under construction to the east of the site.
5. Part B of Policy SWDP 38 provides that development of Green Space will not be permitted unless certain exceptional circumstances are demonstrated. The main parties have focussed on criterion ii. of Part B of Policy SWDP 38. This criterion provides an exceptional circumstance in the form of an assessment of community and technical need (using recognised national methodology where appropriate) which clearly demonstrates that the Green Space is surplus to requirements.
6. As such, it is necessary to consider both the community need and the technical need of the relevant Green Space, when making an assessment under criterion ii. of Part B of Policy SWDP 38. I will deal with the technical need first.

7. Policy SWDP 38 states that Green Space, as identified on the Policies Map, includes a range of private and public open spaces and associated community facilities. The supporting text to the policy indicates that Green Space for recreation and sport are relevant to the application of the policy. I have had regard to the submitted Legal Opinion which discusses the application of Policy SWDP 38.
8. Reference has been made to the South Worcestershire Open Space Assessment (2019) (Open Space Assessment). From the extracts provided, it has been shown that Warndon Parish South ward, where the appeal site is located, has a fairly minimal oversupply of Amenity Greenspace (stated to be an oversupply of approximately 1.46 hectares) and play (child) space (stated to be an oversupply of approximately 0.12 hectares).
9. However, the Open Space Assessment also states that Warndon Parish South ward has a shortfall of Parks & Recreation Grounds (combined) (stated to be a shortfall of approximately 7.44 hectares), and of play (youth) space (stated to be a shortfall of approximately 0.30 hectares).
10. Hence, it is clear that the shortfall of Parks & Recreation Grounds (combined) alone far outweighs the oversupply of Amenity Greenspace in Warndon Parish South ward. I note that it has been stated that the Open Space Assessment shows that Warndon Parish South ward has the second-highest level of Amenity Greenspace in Worcester but, considering all the open space typologies as a whole, this does not change the overall shortfall in green space demonstrated for the ward itself.
11. In light of this, and considering the wide definition of 'Green Space' given in Policy SWDP 38, referred to above, which is broader than the 'Amenity Greenspace' typology used in the Open Space Assessment, I consider that the Open Space Assessment does not demonstrate that the designated Green Space that forms part of the site is in excess of that required. In other words, at local level on a quantitative basis the evidence indicates that there is not a sufficient over-provision of designated Green Space to indicate that the part of the site containing designated Green Space is surplus to requirements.
12. I now turn to the community need for the designated Green Space. The site, which includes the designated Green Space, is on the side of a hill which affords long views across its surroundings. It is easily accessible from the nearby housing estates. The Green Space has been described by interested parties as being part of a beauty spot and this is consistent with my observations.
13. It is important to note that the designated Green Space is close to a care home. I have no reason to doubt the representations submitted which state that the designated Green Space is used by residents of the care home and their visitors. In this regard, I recognise the benefits in terms of health and well-being that the designated Green Space likely provides to older people and to those with disabilities.
14. Similarly, the evidence indicates that the designated Green Space is used for walking, general relaxation, exercising dogs, mountain biking, photography, family outings, as a play area for children, and as a place for children to learn about wildlife. In this way, the designated Green Space, which has the sense of being somewhat separated from the bustle of the wider area, supports the

- mental and physical health and well-being of the local community, including for those who might not benefit from having access to a private garden.
15. The evidence therefore strongly indicates that the designated Green Space is both well-used and highly valued by members of the local community. As such, in relation to criterion ii. of Part B of Policy SWDP 38, it has been demonstrated that there is a community need for the designated Green Space.
 16. Reference has been made to the potential for the proposal to 'off-set' the loss of the designated Green Space, in that upon implementation of the proposal, approximately 0.73 hectares will be designated as Green Space under policy SWDP 5 of the SWDP, meaning that the overall reduction in Green Space would only be approximately 0.24 hectares. This scenario is accounted for in Part C of Policy SWDP 38.
 17. Whilst this does provide support for the proposal by somewhat reducing the technical need for the currently-designated Green Space, as the proposal relates to a housing estate the experience of the currently-designated Green Space in its context would be significantly altered. In particular, the value that it provides to the health and well-being of the community by being set apart from the existing housing developments nearby would be largely eroded. Accordingly, the community need for the currently-designated Green Space would still persist, even taking account of the potential 'off-set'.
 18. Finally, it is worth highlighting that the wording in Policy SWDP 38 states 'clearly demonstrates', rather than merely 'demonstrates'. In relation to this, to my mind the evidence falls far short of clearly demonstrating that the designated Green Space involved in this appeal is surplus to requirements, particularly in relation to its community need. The proposal therefore conflicts with Policy SWDP 38.
 19. Part of the site is included in Preferred Options Ref SWDP NEW 7 of Policy SWDPR 53 of the emerging South Worcestershire Development Plan Review (SWDPR), for an indicative number of 43 dwellings. However, due to the early stage of preparation of the emerging plan I have given this emerging policy limited weight. Considering the proposal's clear conflict with Policy SWDP 38, it does not change my findings.
 20. I therefore find that it has not been shown that exceptional circumstances demonstrate that the proposed development of Green Space should be permitted. The proposal would conflict with Policy SWDP 38 of the SWDP, which I have summarised above. In this way, the proposal would result in very significant planning harm by removing an area of attractive and functional open space which contributes to the quality of life of the local community.
 21. The proposal would also conflict with paragraph 99 of the National Planning Policy Framework (the Framework) which provides that, amongst other things, existing open space should not be built on unless an assessment has been undertaken which has clearly shown the open space to be surplus to requirements.

Other Matters

22. For the avoidance of doubt, as the site is not located within an area identified as 'protect and enhance' or 'protect and restore', as identified on the

- Environmental Character Areas Map, Part C of Policy SWDP 5 of the SWDP is not relevant to the proposal and therefore is not considered further.
23. It has been suggested that the site is a so-called 'windfall site'. However, the Glossary to the SWDP states that these comprise previously developed sites. As much of the site (excluding the 3 existing dwellings) is currently laid to grass with mature hedgerows and trees within the site area, for the purposes of this appeal the site cannot be considered to be a 'windfall site', based on the evidence before me and the definition given in the SWDP. Thus, this is a neutral matter, which does not weigh in favour of the proposal.
24. Although the appellant has questioned whether the Council is maintaining its housing land supply target, it is nevertheless common ground between the main parties that the Council can currently demonstrate a 5 year housing land supply. Hence, paragraph 11 d) ii. of the Framework is not engaged.
25. Aside from the harm to the inherent visual and natural qualities of the green space present at the site, in terms of the design credentials of the proposal, no concerns have been raised by the Council in their decision notice in relation to the effects on the character and appearance of the area, the wider landscape, the amount or quality of public open space to be provided within the site itself, the loss of trees, or the amount of Green Infrastructure proposed in the context of Part A of Policy SWDP 5 of the SWDP. Additionally, no concerns have been raised by the Council in their decision notice with respect to matters relating to flooding, access, or traffic impacts.
26. However, even if I were to likewise reason that the proposal would be acceptable in these respects (noting that the site is adjacent to both existing residential development and land currently being built-out as residential development, and that the proposal incorporates 40% of Green Infrastructure in compliance with Part A of Policy SWDP 5), these would be neutral factors rather than ones which weigh positively in favour of the proposal.
27. Although reports relating to ecology have been submitted¹, little details have been provided relating to the scale of the biodiversity enhancements that would likely accrue through the proposal, which limits the weight that can be given to this matter. As put forward in the submitted Energy Statement², the proposal would incorporate a 'fabric-first' approach, meaning the new dwellings would be energy-efficient, thereby ensuring carbon dioxide reductions for the lifetime of the dwellings.
28. The proposal would contribute 50 dwellings in an accessible location which would count towards the overall supply of housing in the area. Considering this quantum of development proposed in the context of the Council's housing land supply position, this is clearly a matter to which I must give weight.
29. The appellant has calculated that the proposal would support the employment of approximately 155 people, provide approximately 1 apprentice / graduate / trainee, and generate approximately £602,650 in tax revenue, including approximately £56,473 in Council Tax revenue. These figures have not been

¹ Preliminary Ecological Appraisal with Ecological Impact Assessment (Focus Environmental Consultants, May 2020); Environmental DNA (eDNA) Analysis (Focus Environmental Consultants, April 2020)

² Energy Statement & Low or Zero Carbon (LZC) technology feasibility study (Anderson Goddard Ltd, February 2020)

- disputed by the Council. Considering the quantum of units involved, these figures appear realistic.
30. Given the accessible location of the site, the proposal would also provide dwellings for people on the local housing register, which might potentially allow easier accessibility for employment opportunities. It is also the case that the future residents of the proposal would likely contribute to the local economy via the use of nearby services and facilities in the local area.
 31. A Unilateral Undertaking and a Supplemental Unilateral Undertaking were submitted during the appeals process. The Council were given an opportunity to comment on these documents, including on a revision to the Unilateral Undertaking. The Unilateral Undertaking relates to the provision of affordable housing and an education contribution. The Supplemental Unilateral Undertaking relates to monitoring costs of the County Council in connection with the administration and monitoring of the education contribution.
 32. I note that the Unilateral Undertaking does not meet some of the requirements of Annexe N of the Procedural Guide: Planning appeals – England in that its pages are not numbered, the manuscript alterations to its text have not been initialled by all 3 parties, and the plan shown within the First Schedule has not been signed by all 3 parties. Furthermore, the definition for 'Education Contribution' incorrectly refers to the Fourth Schedule, rather than the Fifth Schedule of the Unilateral Undertaking. Nevertheless, as these are minor technical and typographical errors, when reading the unilateral undertakings as a whole I am content that the obligations would be effective and enforceable.
 33. It is common ground between the main parties that there is a pressing need for affordable housing in the area, in that the city of Worcester as a whole is experiencing an undersupply in affordable housing delivery. Indeed, the Council has worked with the appellant to secure the unilateral undertakings before me, which would provide 100% affordable housing on site, with all 50 dwellings being affordable. It is also common ground that the mix of affordable ownership models, proposed to be secured via the unilateral undertakings, reflects the social requirements of the local community and the wider area.
 34. Therefore, I consider that the measures put forward in the unilateral undertakings are necessary, directly related to the development, and fairly and reasonably related in scale and kind to the development. Consequently, the unilateral undertakings would accord with the provisions of Regulation 122 of The Community Infrastructure Levy Regulations 2010 (as amended), so far as is relevant to those particular unilateral undertakings, and the tests for planning obligations set out in the Framework.
 35. Considering all the above-mentioned benefits collectively (including the proposal's contribution of 100% affordable housing for 50 dwellings to meet an identified need for affordable housing in the area), as a group I have given all these benefits substantial weight.
 36. The appeal proposal would give rise to harm in that would remove an area of attractive and functional open space which contributes to the quality of life of the local community. I ascribe very significant weight to this harm.
 37. Setting the very significant weight of this harm against the substantial weight I afford to the benefits I have found, it is clear that the harm would outweigh the

benefits. I therefore find that the matters advanced in support of the proposal, do not, either individually or collectively, outweigh the harm identified, nor the conflict with the development plan identified.

Conclusion

38. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, the appeal is dismissed.

Alexander O'Doherty

INSPECTOR