



Appeal Decision

Site visit made on 19 April 2022

by S D Castle BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14 July 2022

Appeal Ref: APP/W1850/W/21/3288048

Parkway House, Little Woolpits Lane, Parkway HR8 2JG

- 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 Elizabeth Bond against the decision of Herefordshire Council.
 - The application Ref 212114, dated 25 May 2021, was refused by notice dated 28 July 2021.
 - The development proposed is outline planning application for the provision of one dwelling and associated vehicular access, with all other matters reserved.
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Decision

1. The appeal is allowed and outline planning permission is granted for the provision of one dwelling and associated vehicular access, with all other matters reserved, at Parkway House, Little Woolpits Lane, Parkway HR8 2JG in accordance with the terms of the application, Ref 212114, dated 25 May 2021, subject to the conditions listed in the attached schedule and the obligations within the associated unilateral undertaking.

Preliminary Matters

2. The Secretary of State has considered the appeal in accordance with Regulation 14 (1) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (SI 571/2017). It was concluded that Environmental Impact Assessment was not required. The relevant screening direction was issued to the Council.
3. The proposal is for outline planning permission with approval sought at this stage for access only, with layout, appearance, landscaping and scale reserved for future approval. Whilst the submitted proposed block plan shows how the site might be developed, I have treated details other than access as indicative and not as formally part of the scheme.

Main Issues

4. The Council's third reason for refusal asserts that insufficient information has been provided to demonstrate that the development would not adversely impact on trees. The appellant's arboricultural report recommends a buffer zone and no dig techniques to ensure there is no unacceptable adverse impact on the roots of the Oak trees adjacent to the site. Subsequent to the appeal being lodged, the Council has acknowledged that the impact of the proposal on trees can be appropriately controlled by way of planning conditions. Based on the evidence before me, and my observations on site, I see no reason to disagree.

5. Against this background, I consider the main issues to be whether the site is a suitable location for housing having regard to the development plan and national policy; the effect of the development on living conditions; and whether there are material considerations to warrant a departure from the development plan in the overall planning balance.

Reasons

Location

6. It is common ground between the parties that the Council can demonstrate a deliverable five-year housing land supply and that the principle of new residential development on the site is not in accordance with the development plan. The site is not identified to lie within or adjacent to a settlement which is a focus of proportionate housing development under Policy RA2 of the Herefordshire Local Plan Core Strategy (CS). Furthermore, it is not within a defined settlement as set out in policy RA3 of the Core Strategy and is a significant distance away from the nearest settlement (Ledbury) with any notable services and facilities.
7. The route from the appeal site to Ledbury requires pedestrians to cross the A417 to maintain continuous use of a footway, and is unlit for a significant stretch. At the time of my site visit, there was frequent traffic in both directions, and a large proportion of that traffic was made up of larger vehicles. I acknowledge that this was only a snap-shot of the levels and type of traffic on this road. Nevertheless, such traffic could reasonably be expected on a main classified road in a rural area. As such, given the lack of street lights, it would be an unattractive route to be undertaken on foot or by cycle. The lack of suitable walking and cycling routes would result in future residents relying on the private motor car to access regular requirements such as schools, shops, employment and health services. This would significantly reduce the likelihood of sustainable journeys.
8. The appeal site is not, therefore, a suitable location for the proposed dwelling. It would conflict with CS Policies SS2, SS4, SS6, RA2 and RA3 and Policy SD1.1 of the Ledbury Neighbourhood Development Plan (LNDP). These policies, taken together, amongst other things, seek to maintain and strengthen locally sustainable communities across the rural parts of Herefordshire, with development in locations that promote a reduction in dependency on the private car and encourage environmentally sustainable travel habits. The development would conflict with Section 9 of the National Planning Policy Framework (the Framework) which promotes managing patterns of growth to maximise sustainable transport opportunities.

Living Conditions

9. The proposal extends the existing driveway to the rear of Parkway House, and additional traffic to the proposed dwelling would pass in close proximity to the conservatory and rear garden of the existing dwelling. Whilst a single dwelling would generate only limited vehicular movements, cars passing next to the conservatory and close to the private outdoor space immediately to the rear of the existing dwelling would inevitably result in disturbance to the occupiers. The majority of the access driveway is, however, a sufficient distance away from the dwelling to ensure any disturbance would be limited. Parkway House would retain a sizeable garden appropriate for activities linked to a large family

dwelling. Subject to securing appropriate boundary landscaping at the reserved matters stage, the access would not result in a detrimental impact on the privacy of the occupiers of Parkway House.

10. Overall, the proposal would have an unacceptable adverse impact on the living conditions of occupiers at Parkway House by virtue of the disturbance resulting from cars passing next to the conservatory and close to the private outdoor space immediately to the rear of the existing dwelling. The proposal is, therefore, contrary to CS Policy SD1 insofar as it requires development to safeguard residential amenity for existing residents. It also conflicts with similar guidance contained within section 12 of the Framework that states planning decisions should ensure developments create places with a high standard of amenity for existing and future users. The Council's second refusal reason also refers to CS Policy LD1 which relates to landscape and townscape. As such, I do not consider it relevant to the assessment of living conditions and find no conflict with Policy LD1 in that regard.

Planning Balance

11. Planning permission (ref:201956) was granted in September 2020 for the subdivision of Parkway House to create two separate dwellings, including the erection of a rear two storey double gable extension. Condition 1 of that permission requires the development is begun before the expiration of three years from the date of the permission. As such, the permission is extant and the appellant asserts that it is their intention to fully implement the permission should this appeal be dismissed. There is no substantive reason to doubt that the extant scheme would be fully implemented if this appeal is dismissed. As such, the extant permission represents a realistic fallback position.
12. Implementation of the subdivision scheme would result in an additional dwelling in a location that would not accord with the development plan and would not encourage sustainable travel habits. It would also result in a shared driveway and additional disturbance resulting from cars manoeuvring next to the conservatory and close to the private outdoor space immediately to the rear of the existing dwelling. The harms in relation to the first two main issues of this appeal resulting from implementation of the extant permission would, therefore, be of a similar level to that of the appeal scheme.
13. The appellant has submitted a unilateral undertaking¹ (UU) that, if this appeal is granted, obliges the owner of the site not to commence or implement the extant permission and not to commence or implement any alternative development involving the subdivision of any dwelling on the site. The Council assert that the UU does not prevent future planning applications being submitted for the subdivision of Parkway House once the extant permission has expired. Whilst the UU does not prevent future planning applications, any future subdivision of a dwelling on the site would require the removal or modification of the relevant obligation and an assessment as to whether the obligation no longer serves a useful purpose.
14. There is a clear and necessary purpose for the UU given that it ensures the proposal and the extant permission would not have a detrimental cumulative impact of additional open market dwellings at a location I have found, for the reasons set out in my assessment of the first main issue, contrary to the

¹ Dated 21 March 2022

development plan. The UU is therefore necessary to make the development acceptable in planning terms, is directly related to the development given the shared access and close spatial relationship of the proposed dwelling and Parkway House. The UU has been properly executed and serves a legitimate and proportionate planning purpose. The UU is, therefore, in accordance with the tests set out at paragraph 57 of the Framework.

15. In light of my findings regarding the UU, the obligations preventing both the implementation of the extant permission and the subdivision of dwellings on the land are material considerations of considerable weight in favour of the proposal.
16. The Council has not objected to the proposal with regards to its effect on character and appearance, the AONB, highways, drainage, protected species and biodiversity. I see no reason to disagree. I do, however, give significant weight to the conflicts with the development plan identified in my assessment of the first two main issues. As such, the development does not accord with the development plan as a whole. Nevertheless, on the balance of all that is before me, the obligations contained within the UU are material considerations that, in this case, justify a decision which is not in accordance with the development plan.

Conditions

17. I have considered the conditions suggested by the Council against the tests of the Framework and advice provided by the Planning Practice Guidance. Where appropriate, I have amended the list of suggested conditions for clarity and to ensure compliance with national policy and guidance. The numbers in brackets relate to the conditions in the schedule.
18. Conditions to ensure the development is implemented in accordance with the reserved matters, required to be first submitted and approved, and within the standard time period, are necessary (1,2,3). For the avoidance of doubt, a condition requiring the development to be carried out in accordance with the approved plans (4) is necessary, as is one securing a maximum number of dwellings on the site (5).
19. A condition to secure the implementation of a Construction Method Statement is also necessary in the interests of highway safety and to protect the living conditions of local residents (10).
20. To protect the character and appearance of the area, conditions securing tree protection (8) and site levels (6) are necessary.
21. In the interests of highway safety, living conditions, and to promote sustainable transport choices, it is necessary to have conditions securing provision of the appropriate access driveway (12), visibility splays (11), car parking areas (13), cycle parking (14), and an electric vehicle charging point (15).
22. In the interests of ecology, conditions ensuring enhancement of biodiversity (9) and control of external lighting is necessary (16).
23. In order to prevent increased risks of flooding, and in the interests of the principles of sustainable drainage, a condition is necessary to ensure the appropriate surface and foul water drainage of the site (7).

24. Conditions 6 to 12 inclusive are pre-commencement conditions as these measures will need to be agreed and/or put in place before works begin to prevent the development resulting in harm with regard to the respective matters the conditions are seeking to control.

Conclusion

25. The appeal is allowed subject to the conditions in the attached schedule and the obligations within the associated unilateral undertaking.

S D Castle

INSPECTOR

**Schedule of Conditions attached to Appeal Decision Appeal Ref:
APP/W1850/W/21/3288048
Parkway House, Little Woolpits Lane, Parkway HR8 2JG**

1. Details of the appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
2. Application for approval of the reserved matters shall be made to the local planning authority before the expiration of three 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. In so far as it relates to those matters of principle and access considered under this application, the development shall be carried out in accordance with the approved plans (1051/PL01A; 1051/PL02A; 1051/PL03C; SK01) except where otherwise stipulated by conditions attached to this permission.
5. The development hereby approved shall not exceed 1 dwelling.

Pre-commencement

6. No development shall commence until full details of the finished site levels and finished floor levels have been submitted to and approved in writing by the Local Planning Authority. No construction work shall be carried out other than in accordance with the approved details.
7. Prior to the commencement of the development hereby approved, drainage plans for the disposal of foul and surface water flows shall be submitted to and approved by the Local Planning Authority. The development shall be carried out in accordance with the approved scheme and an agreed timetable and shall be retained thereafter.
8. Prior to the commencement of development, a scheme for the protection of the retained trees and an arboricultural method statement (AMS) shall be submitted to and approved in writing by the Local Planning Authority. It shall include:
 - a) A full specification for the construction of any roads, parking areas and driveways, including details of the no-dig specification and extent of the areas of the roads;
 - b) Details of arboricultural supervision and inspection by a suitably qualified tree specialist.

The approved AMS shall thereafter be implemented as agreed.

9. No development shall begin until a Biodiversity Enhancement Strategy [BES] to achieve biodiversity enhancements, including details of bird and bat boxes and compliance with the avoidance and mitigation measures and/or works contained in Table 5.1 of the Preliminary Ecological Report by Lepus Consulting (dated May 2021), has been submitted to and approved in writing by the local planning authority. The BES shall be implemented in accordance with the approved details (including a timetable) and shall be adhered to thereafter.
10. Prior to the commencement of development a Construction Environmental Management Statement shall be submitted in writing to and approved in writing by the Local Planning Authority. The Construction Environmental Management Statement shall include details of:
- i. Construction working hours
 - ii. Parking and turning facilities for vehicles of site operatives and visitors
 - iii. Loading and unloading of materials
 - iv. Storage of plant and materials used in constructing the development
 - v. Wheel washing facilities and/or other measures to prevent mud or other material emanating from the application site reaching the highway
 - vi. Dust mitigation measures
 - vii. Noise and vibration mitigation measures

The development hereby permitted shall not be carried out otherwise than in accordance with the approved Construction Environmental Management Statement and the approved Construction Environmental Management Statement shall be maintained throughout the construction period.

11. Before any other works hereby approved are commenced, visibility splays, and any associated set back splays at 45 degree angles shall be provided from a point 0.6 metres above ground level at the centre of the access to the application site and 2.4 metres back from the nearside edge of the adjoining carriageway (measured perpendicularly) for a distance of 15 metres eastbound and 63 metres westbound, along the nearside edge of the adjoining carriageway. Nothing shall be planted, erected and/or allowed to grow on the triangular area of land so formed which would obstruct the visibility described above.
12. No development shall begin until full details of the access driveway serving the development, including its construction, materials, alignment, levels and drainage have been submitted to and approved in writing by the Local Planning Authority. The dwelling shall not be occupied until the access driveway has been constructed in accordance with the approved details.

Occupation

13. Prior to the first occupation of the dwelling hereby approved, an area shall be laid out within the curtilage of the dwelling for the parking and turning of 2 cars which shall be properly consolidated, surfaced and drained in accordance with details to be submitted to and approved in writing by the

local planning authority. That area shall not thereafter be used for any other purpose than the parking of vehicles.

14. Prior to the first occupation of the dwelling hereby permitted, full details of a covered and secure cycle parking facility within the curtilage of the dwelling shall be submitted to and approved in writing by the Local Planning Authority. The covered and secure cycle parking facility shall be carried out in strict accordance with the approved details and shall be available for use prior to the first occupation of the dwelling hereby permitted. The covered and secure cycle parking facility shall be maintained thereafter.
15. Prior to the first occupation of the dwelling hereby permitted, details of the location of at least one electric vehicle charging point on the development shall have been submitted to and approved in writing by the local planning authority. The electric vehicle charging point(s) shall be installed prior to first occupation of the approved dwelling and shall be maintained and kept in good working order thereafter.
16. No development above slab level shall begin until details of any external lighting to be installed within the site has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details and no other external lighting shall be installed on the site without the written approval of the local planning authority.