



Appeal Decision

Site visit made on 28 June 2022

by Laura Cuthbert BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th August 2022

Appeal Ref: APP/J1860/W/22/3290598

Land north of Brookend House, Leigh Sinton, Malvern WR13 5DY

- 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 Les Childs against the decision of Malvern Hills District Council.
 - The application Ref 21/01781/out, dated 23 September 2021, was refused by notice dated 19 November 2021.
 - The development proposed is outline application (all matters reserved except access) for the construction of up-to three detached dwellings.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Outline planning permission is sought but with access to be considered at this stage. I have therefore taken any indication of reserved matters shown on the submitted drawings to be illustrative, apart from details of the access.

Main Issues

3. The main issues are:
 - whether the site is a suitable location for the proposed development having regard to the development strategy for the area and accessibility to services and facilities;
 - the effect of the proposed development on highway safety;
 - the effect upon the character and appearance of the area; and
 - whether appropriate arrangements have been made to secure a financial contribution towards the provision of local affordable housing.

Reasons

Suitable Location

4. The proposal relates to a roughly triangular parcel of land on the edge of the village of Leigh Sinton. The site is adjacent to Brookend House, a detached dwelling. There is a small group of single storey buildings to the south of Brookend House, which were previously used as Brookend Boarding Kennels.
5. Leigh Sinton is a 'category 2' settlement in the development plan, but the appeal site lies outside of the defined settlement limits of the village. The

proposal would not fall within any of the exceptions set out by the development plan to enable new development in the open countryside. It would not be supported by any other policies. Therefore, despite the proximity of other dwellings, the site is classed as open countryside.

6. The village has some day-to-day facilities including a village store/post office, public house and primary school. Whilst the distances to these facilities may not be overly prohibitive, there is no footpath between the site and the village. Furthermore, there is no street lighting. Future occupants of the proposal would be largely reliant on the private vehicle to access services and facilities. This lack of accessibility to enable future occupants to carry out day to day activities demonstrates that the site would be an unsuitable location for new housing.
7. In consideration of the High Court judgement¹ regarding paragraph 80 (formally paragraph 79) of the National Planning Policy Framework (the Framework), as the proposed development would be adjacent to an existing settlement, the physical location of the proposal would not result in new isolated homes in the countryside that the Framework seeks to avoid. Nevertheless, there would still be negative environmental and social effects arising from the unsuitable location in terms of the lack of accessibility to local services and facilities.
8. In view of the above, future occupants of the proposal would therefore be largely reliant on the private vehicle to access services and facilities. This lack of accessibility to enable future occupants to carry out day to day activities demonstrates that the site would be an unsuitable location for new housing. The proposal would be contrary to Policies SWDP1 and SWDP2 of the South Worcestershire Development Plan (SWDP) (adopted February 2016) which, in combination, sets out the overarching sustainable development principles, including promoting accessibility to everyday facilities for all, especially those without a car and strictly controlling development in the open countryside. It would also be contrary to Policy SWDP4 of the SWDP which states that proposals must minimise demand for travel and offer genuinely sustainable travel choices.
9. The Council's reason for refusal cites paragraphs 15 and 80 of the Framework. I do not consider that paragraph 15, which relates to the planning system being plan-led, would be relevant to the proposal. As I have found that the proposed development would not represent isolated dwellings under the terms of paragraph 80, this would also not be relevant to the proposal.

Highway Safety

10. As a result of the lack of footpaths between the appeal site and the village identified above, future occupants of the dwellings would be encouraged to utilise the highway and its verges until they reach the footpath at the junction of Stocks Lane and Hoopers Close, which the appellant has calculated to be approximately 400m from the site.
11. I note that the appellant contends that the lack of surfaced footpaths would not necessarily make the environment unsafe. Irrespective of the lack of accident records, after walking the grass verges on my site visit, I am not convinced

¹ Braintree District Council v Secretary of State for Communities and Local Government & Ors [2017] EWHC 2743 (Admin)

that the grass verge would represent a safe environment for pedestrians, especially the less physically capable, disabled residents and people with children.

12. The speed limit of the highway changes to 30mph to the south of the appeal site, as you enter Leigh Sinton. As vehicles pass the appeal site, they are likely to either be slowing down from the 60mph which leads up to the appeal site or speeding up as they approach the increase in speed limit. The introduction of 3 dwellings would introduce additional pedestrians utilising the grass verges, increasing the possibility of pedestrian and vehicular conflict. The bend in the road, on which the appeal site is positioned, would also make walking on the verges more hazardous given that visibility of the highway is likely to be reduced at certain points.
13. Whilst future occupants of the dwellings may not expect to have lit or surfaced footpaths, this does not mean that the lack of footpaths into the village would be acceptable, especially given the harm that I have identified in using the grass verges.
14. I acknowledge the 2 dwellings that have recently been built off Stocks Lane to the north of the appeal site and the appellants claim that there was a lack of a footpath from this site at the time that the dwellings were approved. However, no further details have been provided. Nevertheless, the circumstances in each proposal are likely to be different, and in any event the fact that an apparently similar development has been granted permission is not a reason, on its own, to allow unacceptable development. I have considered this appeal proposal on its own merits and concluded that it would cause harm for the reasons set out.
15. There was also a planning application for the redevelopment of the site previously occupied by Brookend Boarding Kennels². I note that there was no highway objection to this application. However, the Council have raised it as an issue as part of this appeal. The fact that it was not an issue raised on a separate planning application, on a different site does not change the harm that I have identified.
16. I note that there is no highway objection specifically to the vehicular access serving the proposal and that the required visibility splays would be achieved. I have no reason to disagree. However, the proposal, as a result of the lack of accessibility to local services and facilities, would not provide an adequate safe environment for pedestrians, to the detriment of highway safety. It would conflict with criteria B ix of Policy SWDP21 and Policy SWDP4 of the SWDP which, in combination, sets out that developments will minimise demand for travel and offer genuinely sustainable travel choices, maximising opportunities for pedestrian and cycle linkages to the surrounding area and local services and should be generally accessible for all users, including those with disabilities. Paragraph 111 of the Framework supports the refusal of development where there would be an unacceptable impact on highway safety.

Character and Appearance

17. The appeal site is relatively enclosed, with mature vegetation running along both the northern boundary and the western boundary, alongside the main road running in to Leigh Sinton. A post and rail fence runs along the east of the

² 21/00784/FUL

site, beyond which lies open countryside. A 1.8m close boarded fence separates the site from Brookend House which lies adjacent. The site lies at a slightly elevated position from the highway to the west.

18. After the bend in the road to the west of the appeal site, the more built-up form of the village begins, with existing dwellings positioned along the north of Stocks Lane. Therefore, the appeal site currently forms an open gap between Brookend House and the more built-up form of the village. The undeveloped nature of the appeal site contributes positively to the rural character of the area.
19. Although matters relating to scale, layout, appearance, and landscaping have yet to be fixed, the proposal would result in 3 dwellings spaced across the appeal site. The proposal would introduce built form on to elevated land, which would appear incongruous within the rural landscape. The introduction of residential development on the appeal site would cause harm to the character and appearance of the area, permanently eroding the positive contribution the existing open gap makes to its rural character.
20. Whilst the retention of the vegetation along the highway would help to screen the proposal to some extent, I am not satisfied that an acceptable scheme for 3 dwellings would be capable of being accommodated on the site without harming the character and appearance of the area. The lack of objection from any statutory consultees on the matter of character and appearance does not alter my findings above.
21. The proposal would therefore harm the character and appearance of the area. It would be contrary to Policy SWDP2 of the SWDP which states that development should safeguard and (wherever possible) enhance the open countryside.

Affordable Housing

22. Policy SWDP15 of the SWDP relates to meeting affordable housing needs. The policy seeks a financial contribution equivalent to 20% for sites involving less than 5 units. The Council have calculated that the relevant amount for the proposal would be £12,797.00 per dwelling. Therefore, a financial contribution towards affordable housing would be necessary.
23. Whilst the appellant is agreeable to the contribution, they have advised that they have been unable to get one of the parties who have a current interest in the land to sign up to a legal agreement in order to secure the relevant monies. The appellant has suggested that this could be secured by an appropriately worded condition instead.
24. The Planning Practice Guidance (PPG) states³ 'a negatively worded condition limiting the development that can take place until a planning obligation or other agreement has been entered into is unlikely to be appropriate in the majority of cases. Ensuring that any planning obligation or other agreement is entered into prior to granting planning permission is the best way to deliver sufficient certainty for all parties about what is being agreed. It encourages the parties to finalise the planning obligation or other agreement in a timely manner and is important in the interests of maintaining transparency.'

³ paragraph reference 21a-010-20190723

25. The PPG also states that such a condition would only be appropriate 'in exceptional circumstances'. However, no exceptional circumstances have been presented, and based on the limited evidence before me, it does not appear that any such circumstances exist. A condition of this nature would therefore be inappropriate in this case.
26. Therefore, the proposal has failed to make appropriate arrangements to secure a financial contribution towards the provision of local affordable housing. It would be in conflict with Policy SWDP15 of the SWDP which sets out the thresholds and amount of affordable housing that proposals should include to be policy compliant.

Other Matters

27. There is a dispute between the parties as to whether the Council can demonstrate a five-year supply of housing. I return to this matter in my Overall Balance and Conclusion section below.
28. The appellant notes the benefits of regenerating a 'vacant brownfield site'. However, it is considered that the appeal site would fall outside of the Framework's definition of what would be considered a brownfield site (also known as 'previously developed land'). Therefore, I attach no weight to this alleged benefit in my decision.

Overall Balance and Conclusion

29. As set out above, I conclude that the development would be in an unsuitable location for new housing, would prejudice highway safety, would harm the character and appearance of the area, and would fail to secure a financial contribution towards the provision of affordable housing. It would be contrary to the development plan in these respects.
30. Set against this, the development would provide 3 family dwellings that could help to support local services and facilities, and some additional green infrastructure. Moreover, it would generate some modest economic benefits through the creation of employment and the purchasing of materials and furnishings.
31. In these circumstances, even if the 'tilted balance' at paragraph 11 of the Framework were engaged, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits in my view. Accordingly, the material considerations in this case do not indicate that the proposal should be determined other than in accordance with the development plan.
32. For the reasons given above, I conclude that the appeal should be dismissed.

Laura Cuthbert

INSPECTOR