



Appeal Decision

Site visit made on 25 October 2022

by Helen Davies MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th November 2022.

Appeal Ref: APP/J1860/W/22/3303735

Land served by Brook Close, Brook Close, Kempsey, Worcestershire WR5 3LE

- 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 John Mill of Millstrand Properties Limited against the decision of Malvern Hills District Council.
 - The application Ref 21/01799/OUT, dated 24 September 2021, was refused by notice dated 24 January 2022.
 - The development proposed is three self-build dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in outline with all matters reserved for future consideration. I have had regard to the submitted plans, but other than the red line site boundary, have considered all elements solely on the basis that they have been submitted for indicative purposes.
3. Drafts of planning obligations were submitted but were not signed, consequently no finding on them has been made and they carried no weight under the appeal.

Main Issues

4. The main issues are:
 - Whether the appeal site would be a suitable location for new housing, having regard to the development strategy; and
 - The effect of the proposed access on the safety of vehicular and pedestrian traffic.

Reasons

Suitable location for new housing

5. Policy SWDP2 of the South Worcestershire Development Plan 2016 (SWDP) sets out the development strategy and settlement hierarchy for the area. The main body of the site, where the bulk of the proposal would be delivered, is outside of the Kempsey development boundary. It is therefore reasonable to consider the site as being classified as open countryside, where development of dwellings will be strictly controlled, other than for specified exceptions. I have

been presented with no evidence to suggest that the proposal would benefit from any of the exceptions, so the proposal is contrary to Policy SWDP2. Policy K2 of the Kempsey Neighbourhood Plan 2017 (KNP) reinforces this position in that new housing development outside of the Kempsey development boundary will be strictly controlled in a similar manner.

6. The principles which inform the development strategy, as set out under SWDP2, include safeguarding the open countryside. The site is currently set to grass, with a number of mature trees around the perimeter. While the site adjoins development along some of its boundaries, the boundary to the south and the long boundary to the east are onto open fields. Despite being adjacent to development, the open and undeveloped nature of the site currently contributes positively to the surrounding countryside. A public right of way runs through the adjacent field, from which the development would be visible, despite being screened to some extent by trees.
7. Regardless of its limited scale, the proposal would significantly urbanise the site, with development visibly encroaching into the countryside. In light of this, the proposal would erode the integrity of policies focused on the location of housing, as well as fail to safeguard the open countryside. This resulting harm would be permanent and significant.
8. The development strategy encourages effective use of accessible brownfield land. In addition to being vegetated and undeveloped, the site is physically and functionally separate from the adjacent development at The Firs. I have been presented with no evidence that would lead me to conclude that the site should be considered to be brownfield or previously developed land. Even if the site were brownfield or previously developed land, this would not outweigh the harm I have identified.
9. I conclude that the appeal site would not be a suitable location for new housing with regard to the development strategy as it fails to comply with Policies SWDP2 of the SWDP and K2 of the KNP. These policies seek to ensure that development in the countryside is strictly controlled and the open countryside is safeguarded.

Highway safety

10. While access is a reserved matter, I need to consider whether an acceptable access to serve the proposed 3 dwellings could be devised for this site. The access point¹ has been identified as being from Brook Close. Given this access point, the configuration of the site and its relationship with Brook Close, any scheme would inevitably involve access to the main body of the site being via a relatively long and narrow strip of land. This access strip lacks a passing place and its width is further restricted at the entrance to the main body of the site by the presence of a pumping station building. The appellant has presented a drawing which they say shows that emergency and refuse vehicles could turn on site, within the indicative site layout. However, the drawing shows extremely tight manoeuvring, the need to restrict boundary planting and the need for vehicles to pass extremely close to the pumping station building. The pumping station has maintenance doors which open out over the access strip.

¹ Even when access is a reserved matter, Article 5(3) of The Town and Country Planning (Development Management Procedure) (England) Order 2015 requires that the access point be identified.

11. Together, the site configuration and restrictions may mean that larger vehicles would choose not to turn on site, but to reverse. In addition, given the length of the access strip and lack of a passing place, it is likely that two vehicles would regularly meet along the access strip. Regardless of the size of vehicle, this would result in the need for one vehicle to reverse, or to have to wait at one end causing a potential obstruction to other vehicles. As a consequence, this could lead to highway safety issues on Brook Close, despite it being a quiet street, as well as within the site. The narrow access strip would also limit options to provide a footway which, when combined with the issues above, could result in safety issues for pedestrians and cyclists. I therefore do not have substantive evidence that would lead me to conclude that a safe and suitable access to the site could be achieved.
12. Issues have also been raised regarding matters such as the distance to refuse storage points. I have been provided with insufficient information to reach a conclusion on these matters. Notwithstanding this, I see no substantive reason why such issues could not be dealt with under a reserved matters application, were the proposal otherwise acceptable.
13. I conclude that the access would be likely to result in unacceptable harm to the safety of vehicular and pedestrian traffic. Consequently, it would conflict with policies SWDP4 and SWDP21 of the SWDP. These policies, amongst other things, seek to ensure that development addresses road safety, enables vehicular traffic to access the highway safely, and maximises opportunities for pedestrian and cycle linkages. Furthermore, the proposal would conflict with paragraphs 110 and 111 of the Framework which seek to secure safe and suitable access and avoid any unacceptable impact on highway safety.

Planning balance

14. During the course of the appeal, the Council have confirmed that they can no longer demonstrate a 5 year housing land supply. Therefore, in accordance with the provisions of paragraph 11d and footnote 8 of the Framework, policies which are most important for determining the application are considered to be out of date. The proposal does not impact on areas or assets of particular importance, so in accordance with paragraph 11dii, permission should be granted, 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.
15. As set out above, the proposal would conflict with policies within the SWDP and KNP in terms of the location and the access. The resulting harm would be significant and long lasting so I ascribe it substantial weight.
16. In terms of benefits, the proposal would contribute towards the supply of housing, in an area with an ongoing under supply. There would be some social and economic benefits arising from the construction period and future spend of occupants giving support to local services and facilities. However, construction benefits would be short term and the proposal would add only three dwellings to overall local supply, so I can give these benefits only limited weight.
17. The proposal would also make a contribution to the supply of self-build plots. The SWDP does not treat self-build housing as an exception for the purposes of controlling development in the countryside. However, the Framework sets out under Paragraph 62 that the size, type and tenure of housing needed for

different groups in the community should be assessed and reflected in planning policies. This includes those wishing to commission or build their own homes. Footnote 28 sets out that Councils should give enough suitable development permissions to meet the identified demand for such housing, in accordance with the requirements of the Self Build and Custom Housebuilding Act 2015.

18. The Council concede that they cannot demonstrate a sufficient supply of self-build housing. While a recently granted outline permission² which includes 12 self/custom build units may help meet demand, a significant shortfall would remain. Consequently, the proposal would help towards achieving the supply of self-build housing which is needed to meet statutory requirements. However, as only 3 self-build plots would be provided, I ascribe this material consideration moderate weight in favour of the proposal.
19. The site is not isolated in that it is adjacent to Kempsey, which offers a range of facilities and services, along with public transport to larger settlements. The proposal would also comply with many elements of policy, as set out in the appellant statement of case. However, a sustainable location and policy compliance is an expectation for all proposals, so this is a neutral factor within the overall planning balance.
20. Taking all of the above factors into account, and when assessed against the policies in the Framework taken as a whole, the adverse impacts of the proposal, would significantly and demonstrably outweigh the benefits. Consequently, the Framework paragraph 11d presumption in favour of sustainable development does not apply. The appeal scheme would conflict with the development plan and there are no material considerations worthy of sufficient weight that would indicate a decision other than in accordance with the development plan.

Other Matters

21. The SWDP is undergoing review but due to the relatively early stage of this process, policies are still subject to change and therefore carry minimal weight as a material consideration under this appeal. The appellant has highlighted various appeal decisions to which I have had regard. However, I have considered the appeal on its own merits and the evidence before me.
22. Regardless of whether or not the proposal was opposed by neighbours, I have reached my decision on the basis of the evidence, including observations made during my site visit. The application subject to this appeal was not refused on the basis of impact on neighbour living conditions so this has not formed part of my reasoning.

Conclusion

23. For the reasons given above and taking into account the development plan as a whole and all other relevant material considerations, I conclude that the appeal should be dismissed.

Helen Davies

INSPECTOR

² Application reference 21/01287/OUT, allowed on appeal reference APP/J1860/W/21/3289643.