



Appeal Decision

Site visit made on 25 October 2022

by Helen Davies MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th November 2022

Appeal Ref: APP/J1860/W/22/3300983

Land either side of Station House, A456 Newnham Bridge, Newnham Bridge WR15 8JE

- 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 D Clay or Twoland Ltd. against the decision of Malvern Hills District Council.
 - The application Ref 21/01397/OUT, dated 19 July 2021, was refused by notice dated 21 April 2022.
 - The development proposed is the erection of 5no. self-build dwellings and demolition of existing greenhouses.
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Decision

1. The appeal is allowed and outline planning permission is granted for the erection of 3no. self-build dwellings and demolition of existing greenhouses, at Land at Station House, A456 Newnham Bridge, Newnham Bridge WR15 8JE, in accordance with the terms of the application Ref 21/01397/OUT, dated 19 July 2021, subject to the conditions in the attached schedule.

Preliminary Matters

2. The description of development and site address in the banner heading have been taken from the planning application form. The application originally proposed 2 dwellings to the west of Station House and 3 dwellings to the east. During the course of the application, revised drawings were submitted without the 2 dwellings to the west, reducing the number of dwellings proposed to 3. The Council dealt with and refused the application on the basis of the 3 dwellings shown on the revised drawings. I have considered the appeal on the same basis and this is reflected in the description of development and site address set out in my decision above.
3. The application was made in outline with all matters reserved for future consideration, except for access. I have had regard to the block plan and street elevations drawings but have considered all elements as indicative, apart from the access.

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 access to facilities and services;
 - The effect of the proposed access arrangement on the safety of vehicular and pedestrian traffic; and

- Whether the proposal would make an adequate contribution towards the delivery of affordable housing.

Reasons

Suitable location for new housing

5. Policy SWDP1 of the South Worcestershire Development Plan 2016 (SWDP) sets out the overarching sustainable development principles for the area, with Policy SWDP2 defining the development strategy and settlement hierarchy. The site is within Newnham Bridge which does not have a development boundary so is categorised as open countryside. Policy SWDP2 states that development in the open countryside 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 policies SWDP1 and SWDP2.
6. The principles which inform the development strategy, as set out under SWDP2, include safeguarding the open countryside and encouraging effective use of accessible brownfield land. The site consists of a hard surfaced area with greenhouses and outbuildings to the rear. There are houses either side and to the back of the site and it fronts directly onto the A456. As such, while not within a settlement boundary, the site is surrounded by other development so is not an isolated. When viewed on the ground, the character of the site and its immediate context is not that of an open countryside location and it does not have an undeveloped rural appearance. In addition, the site is previously developed or brownfield land, the use of which is encouraged by the National Planning Policy Framework (the Framework), where appropriate. While the proposal would conflict with policies SWDP1 and SWDP2 in terms of being located outside of a development boundary, in light of the site context, any harm to the countryside, which the policies seek to protect, would be limited.
7. Newnham Bridge is identified in the SWDP as a lower category village, with limited services. While it was evident from my site visit that facilities and services in the immediate area are very limited, there is easy access to a bus stop via a footway. Regular, albeit not that frequent, bus services connects the village to towns with a much wider array of facilities and services. Therefore, while future occupants of the development may choose to use private motor vehicles, sustainable travel choices are available. This is also in light of paragraph 105 of the Framework, which recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and this should be taken into account in decision-making.
8. 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 SWDP1 and SWDP2 of the SWDP in terms of its location within an area designated as countryside. However, the proposal would not have a harmful urbanising effect on the area and would integrate effectively with its surroundings. In addition, the site offers an acceptable level of access to facilities and services. As such, I find no significant conflict with policies SWDP4 and SWDP21 of the SWDP, which seek to secure development that minimises the demand for travel, offers genuinely sustainable travel choices and integrates effectively with its surroundings.

Highway safety

9. I am informed that the site is currently unused but was originally associated with the railway infrastructure. The proposed access is an existing access so can already be used by vehicles. Consequently, the consideration under this appeal relates to the impact of the proposed use of the access for 3 houses.
10. The access is on to Station Close which is a short, quiet, dead end road. While the access would be near to the junction where Station Close meets the A456, this would not be a significant issue, provided suitable visibility splays were maintained, including along the frontage. A condition could be used to ensure that visibility is not blocked by landscaping or boundary treatments. On the basis of the submitted details and drawings, as well as observations made during my site visit, I have no substantive evidence which would lead me to conclude that use of the access for 3 houses would have a greater impact on highway safety than its current or previous use.
11. I conclude that the proposed access arrangement would not result in unacceptable harm to the safety of vehicular and pedestrian traffic. Consequently, the development would comply with policies SWDP4 and SWDP21 of the SWDP, which together, amongst other things, seek to ensure that vehicular traffic from development is able to access the highway safely. Furthermore, it would accord with paragraph 111 of the Framework which specifies that development should only be refused on highways grounds if there would be an unacceptable impact on highway safety.

Affordable housing

12. Paragraph 64 of the Framework specifies that provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas, where policies may set out a lower threshold of 5 units or fewer. The appeal site is within a designated rural area where policy SWDP15, in conjunction with SWDP15B, sets out that on sites of less than 5 houses a financial contribution towards local affordable housing provision will be sought.
13. No such contribution was proposed prior to the application being determined by the Council but a signed and dated unilateral undertaking (UU) has been submitted by the appellant during the course of the appeal, copied to the Council. On the basis of the evidence before me, I am satisfied that there is a need for affordable housing in the locality and the need for an affordable housing contribution would in principle satisfy the three tests in Regulation 122(2) of the CIL Regulations 2010 and the tests for planning obligations set out in Paragraph 57 of the Framework. The financial contribution set out in the UU is consistent with policy SWDP15 and I am satisfied that the UU can be relied upon by the Council to secure the contribution.
14. I conclude that the proposal, alongside the UU, would make an adequate contribution towards the delivery of affordable housing. Consequently, the development would comply with policy SWDP15 of the SWDP.

Planning balance

15. 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.

16. As set out above, the proposal would conflict with policies SWDP1 and SWDP2 in terms of the location. Due to the site context, the resulting harm would be minimal so I ascribe the adverse impact limited weight.
17. 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 houses to overall local supply, so I can give these benefits only limited weight.
18. 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 Council's 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.
19. The Council concede that they cannot demonstrate a sufficient supply of self-build housing. While a recently granted outline permission¹ 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.
20. Taking all of the above factors into account, when assessed against the policies in the Framework taken as a whole, the adverse impacts of the proposal would not significantly and demonstrably outweigh the benefits. Consequently, the Framework paragraph 11d presumption in favour of sustainable development applies and advises that planning permission should be granted. Planning law² requires that determination must be in accordance with the development plan unless material considerations indicate otherwise. In this case, the presumption in favour of sustainable development is a material consideration of sufficient weight to indicate that permission should be granted notwithstanding the minor conflict with the development plan.
21. The self-build nature of the houses is a fundamental element of the planning balance set out above, so needs to be secured. To this end the appellant has submitted a UU. I have considered the UU against the three tests set out in the Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010. I consider it necessary to control the use of the land

¹ Application reference 21/01287/OUT, allowed on appeal reference APP/J1860/W/21/3289643.

² Section 38(6) of the Planning and Compulsory Purchase Act 2004.

pursuant to delivering self-build housing, which accords with policy objectives of the Framework by securing housing of this type to address a shortfall in supply. Consequently, the UU directly relates to the development, fairly and reasonably in scale and kind. I am satisfied that the UU can be relied upon by the Council to secure the delivery of self-build houses at the site.

Other Matters

22. Matters such as drainage, waste management, biodiversity and details of the design of the houses, including window placement to maintain privacy, would be considered under reserved matters applications. Matters such as the stability of the bank to the rear of the site are outside of planning legislation but would be considered under the appropriate legislation as necessary.

Conditions

23. The Council and its consultees have suggested conditions that they consider would be appropriate, I have considered these in light of the Planning Practice Guidance (PPG). For clarity and to ensure compliance with the PPG, I have amended some of the Council's suggested wording.
24. As planning permission for the development is granted at outline stage with all matters reserved except for access, a condition is necessary to secure matters of appearance, landscaping, layout and scale, with the standard conditions specifying when the reserved matters applications must be submitted and when the development must be commenced by. A condition listing the approved drawings is also necessary to provide clarity to the parties. I have specified the most recent plan, submitted under the appeal, which clarifies visibility at the access.
25. The appeal has been allowed on the basis of being self-build housing. While the fact of this is secured under the UU, a condition is necessary to secure details of the mechanism, including marketing of the plots as self-build. While the basic details of the access have been considered under this outline application, ensuring a suitable internal layout of the driveway and maintenance of suitable visibility are necessary to ensure that use of the access is safe. I have therefore attached a condition to secure these details at an early stage.
26. In the interests of the safety of future occupiers and in light of the previous use of the site, a condition is imposed relating to remediation of any land contamination. Finally, to ensure that suitable drainage can be accommodated within a proposed layout, details of any soakaways are required.

Conclusion

27. 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 allowed.

Helen Davies

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale of the development (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) An 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) Unless where required or allowed by other conditions attached to this permission, the development hereby approved shall be carried out in accordance with the information provided on the application form and the following plans – 2108/P/02F (so far as this identifies the point of access and visibility) and 2108/P/01 (red outline).
- 5) No development shall commence until a scheme to ensure that this development is delivered as self-build housing has been submitted to and approved in writing by the Local Planning Authority. This scheme shall include, but not be limited to, the following matters.
 - Measures, including provisions to be included in any legal transfer of land, to ensure that the housing is built by an individual, a group of individuals, or persons working with or for them, to be occupied by that individual; and
 - Details of a marketing strategy for the self-build housing plots and the associated period of marketing.

The self-build housing plots hereby permitted shall not be marketed until the Council has formally agreed the scheme. The first occupation of each dwelling shall be by a person or persons who is/are registered on the Part 1 of the District Council's Self Build register and who had a primary input into the final design and layout of that dwelling and the dwellings shall be occupied by this/these person(s) for a period of at least three years, unless otherwise agreed in writing by the Local Planning Authority.

If at the end of the marketing period the landowner has been unable to sell one or more of the self-build housing plots in accordance with the marketing strategy the landowner shall serve written notice on the District Council that it has appropriately marketed the plots for the agreed period and include sufficient evidence to demonstrate compliance. In the event that the District Council is satisfied, the landowner shall offer to sell the plots to the District Council (and if elected by the District Council either to a Registered Provider or a housing company acting on behalf of the Council). Such offer shall specify the terms of the sale and remain open for at least 12 weeks. In the event that the offer is declined in writing by the District Council, the landowner shall be released from the obligations contained within this condition requiring the plots to be provided for self-build housing.

6) Unless otherwise agreed in writing by the Local Planning Authority, development other than that required to be carried out as part of an approved scheme of remediation, must not commence until the following points a) to g) have been complied with:

- a) A preliminary risk assessment must be carried out. This study shall take the form of a Phase I desk study and site walkover and shall include the identification of previous site uses, potential contaminants that might reasonably be expected given those uses and any other relevant information. The preliminary risk assessment report shall contain a diagrammatical representation (conceptual model) based on the information above and shall include all potential contaminants, sources and receptors to determine whether a site investigation is required and this should be detailed in a report supplied to the Local Planning Authority. The risk assessment must be approved in writing by the Local Planning Authority before any development takes place.
- b) Where an unacceptable risk is identified a scheme for detailed site investigation must be submitted to and approved in writing by the Local Planning Authority prior to being undertaken. The scheme must be designed to assess the nature and extent of any contamination and must be led by the findings of the preliminary risk assessment. The investigation and risk assessment scheme must be compiled by competent persons and must be designed in accordance with the Environment Agency's "Land Contamination: Risk Management" guidance.
- c) Detailed site investigation and risk assessment must be undertaken and a written report of the findings produced. This report must be approved by in writing by the Local Planning Authority prior to any development taking place. The investigation and risk assessment must be undertaken by competent persons and must be conducted in accordance with the Environment Agency's "Land Contamination: Risk Management" guidance.
- d) Where identified as necessary a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to identified receptors must be prepared and is subject to the written approval of the Local Planning Authority in advance of undertaking. The remediation scheme must ensure that the site will not qualify as Contaminated Land under Part 2A Environmental Protection Act 1990 in relation to the intended use of the land after remediation.
- e) The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development, other than that required to carry out remediation.
- f) Following the completion of the measures identified in the approved remediation scheme a validation report that demonstrates the effectiveness of the remediation carried out must be produced and is subject to the written approval of the Local Planning Authority prior to the occupation of any dwellings.

- g) In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the Local Planning Authority. An investigation and risk assessment must be undertaken and where necessary a remediation scheme must be prepared. These will be subject to the written approval of the Local Planning Authority. Following the completion of any measures identified in the approved remediation scheme a validation report must be prepared, which is subject to the written approval of the Local Planning Authority prior to the occupation of any dwellings.
- 7) Before any development above slab level, details of the location of any proposed soakaway shall be submitted to and agreed in writing by the Local Planning Authority. Any soakaway should be located no less than 5m from any building or sub-structure and 2m from a site boundary. If soakaway drainage is not possible on site, an alternative method of surface water disposal should be submitted for approval. The approved details shall be implemented in full prior to first occupation of any of the dwellings and retained as such thereafter.
- 8) Before any development above slab level, details of the access, driveway layout and visibility splays will be submitted to and agreed in writing by the Local Planning Authority. This will show a 4.1 metre wide shared driveway for at least the first 15 metres back from the access point; visibility at the access point; and the turning and parking areas. The approved details shall be implemented in full prior to first occupation of any of the dwellings and retained as such thereafter.

***** End of Conditions *****