



Appeal Decision

Site visit made on 14 February 2023

by S Crossen BA (Hons) PgCert PgDip MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 April 2023

Appeal Ref: APP/J1860/W/22/3308748

Maisey Cottage, Gilberts End Lane, Hanley Castle, Worcestershire WR8 0BX

- 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 Zoe Shaw against the decision of Malvern Hills District Council.
 - The application Ref M/22/00851/FUL, dated 1 June 2022, was refused by notice dated 16 September 2022.
 - The development is proposed erection of a self build dwelling with an associated new vehicular access.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has referred to the emerging policies of the South Worcestershire Development Plan. The statement suggests that the timeframe for adoption is October 2023 and that it is at regulation 19 stage. I have not been provided copies of any of these policies. I have no information about whether any policies have been modified or if there are any unresolved objections. Those quoted suggest they would accord with the National Planning Policy Framework (Framework) insofar as they make some provision for self build development. However, as the plan is only at consultation stage, and has not yet been subject to an examination process to determine its soundness, these emerging policies are given little weight in my decision.
3. At the time the Council made its decision on the application it had a recognised shortfall in housing delivery. That position has subsequently changed, and it can now demonstrate a 5.06 year housing land supply. The appellant has not disputed that figure.
4. A unilateral undertaking (UU) pursuant to section 106 of the Town and Country Planning Act 1990 (as amended) was submitted as part of the appeal. The Council has also referred to a commuted sum in its suggests conditions document and I have had regard to this matter in my decision.

Main Issues

5. The main issues are:
 - whether the appeal site would be a suitable location for new housing, having regard to access to goods and services, and the development strategy;

- the effect of the development on the character and appearance of the area; and
- if harm arises, whether this is outweighed by other matters including housing land supply and self build housing provision

Reasons

Suitable location for housing

6. Policy SWDP4 of the South Worcestershire Development Plan adopted February 2016 (SWDP) requires that development minimises demand for travel and there are sustainable travel choices, with priority given to improving public and community transport provision, walking and cycling.
7. The appeal proposes a large two storey detached house with a double garage and a long driveway leading from Gilberts End Lane, a narrow road with a 60mph limit, wide enough for two cars to pass but without a footpath. Maisey Cottage is a large farmhouse located close to the appeal site with agricultural storage sheds built between the two sites. Beyond Maisey Cottage is a public footpath which leads from Gilberts End Lane into Hanley Castle, which is within a mile of the appeal site where there is a bus stop, school, church, and public house. The nearest shops are in Hanley Swan and Upton upon Severn, which are more than a mile away.
8. To access Hanley Castle by foot, a short stretch of the walk would be along Gilberts End Lane and then along a public footpath, which has no lighting nor bound surface, so at times of the year due to weather conditions may not be practical to use. The appellant suggests there are designated cycle paths between Upton upon Severn and Hanley Swan, but no further information is provided. At my site visit I did see signage indicating a shared cycle path with pedestrians along the main road, but I saw no dedicated cycle lane at the appeal site on Gilberts End Lane, and travel by cycle to either of these destinations would involve sharing the vehicular highway in part along 60mph limit roads. Consequently, it is likely that occupiers of the proposed house would need to rely on a car to benefit all of the local facilities needed to serve the day to day needs of future occupiers.
9. The appellant has provided an extract of an officer's report¹ relating to planning permission for houses on Brinkley Drive, in which it describes these houses to have a reasonable range of services being available at Hanley Castle, accessible by foot. This differs to the appeal site because the access to Brinkley Drive meets a change in highway speed limit to 40 mph and the proposed access to the appeal house would be almost double the distance from the junction of Gilberts Lane to the main road. Consequently, the accessibility of the Brinkley Drive scheme is materially different from the appeal site.
10. Policy SWDP2 of the SWDP sets out the development strategy and settlement hierarchy for the area. The appeal site is not within or adjoining the development boundary of Hanley Castle, the nearest settlement. Policy SWDP2 also seeks to protect open countryside which is defined as land beyond the development boundary and lists 8 exceptions. Policy RE2 of the Hanley Castle Neighbourhood Development Plan, made January 2019 (HCNDP) seeks to maintain separate character and identity between Hanley Castle and Hanley

¹ 16/00706/FUL

Swan by restricting development outside of the respective boundaries, listing three exceptions. There is no evidence to suggest that the development proposed in this appeal would benefit from any of the exceptions in policies SWDP2 or RE2.

11. The appeal site is located away from nearby urban development by two field parcels with boundary hedges. Two boundaries of the appeal site meet fields, one meets the road where the appeal site would be accessed from, and the remaining boundary meets storage sheds and the curtilage to Maisey Cottage.
12. The appellant has provided four examples of appeal decisions which have allowed self build housing outside of defined settlement boundaries. The first² is located in a different authority and it relates to a larger scheme of 9 houses. The decision also describes the site as being very close to the urban edge and near to a large urban extension. The second³ is located in a different authority, for two self build houses, and the immediate vicinity of that appeal site is described as not presenting itself to be a "countryside location", which did not have an undeveloped "rural character or appearance", and in that case access to goods or services was not in dispute.
13. The third⁴ is in the same authority, however it is described to adjoin and partly cross the development boundary, on a site which had the appearance of being previously developed. Access to goods or services was not in dispute in that appeal either. The fourth⁵ is described in the appeal as being "surrounded by other development", "the character of the site and its immediate context is not that of an open countryside location" and that the "site is previously developed or brownfield land". These identified differences, in particular relating to their relationship to settlements, demonstrate that the submitted examples are not directly comparable to the appeal site.
14. The appellant also refers to four planning decisions⁶ which were approved for housing outside of a settlement boundary. However, these predate the SWDP and were approved at a time when the Council were unable to demonstrate a year housing land supply (5YHLS), so the circumstances are different to this appeal.
15. The appellant highlights that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. In this instance there are no sustainable transport solutions and occupants would need to rely on travel by car.
16. The appellant states that the proposal accords with policy Trf 1 of the HCNDP and this is not disputed by the Council.
17. I conclude that the location of the appeal site would be contrary to the development strategy as it fails to comply with Policies SWDP2 of the SWDP and RE2 of the HCNDP. These policies seek to ensure that development is focussed in urban areas, where both housing needs and accessibility to lower cost public services are greatest.

² APP/H1840/W/19/3241879

³ APP/H1840/W/20/3255350

⁴ APP/J1860/W/20/3259855

⁵ APP/J1860/W/22/3300983

⁶ 14/00273/OUT, 15/00808/FUL, 16/00706/FUL, 14/01497/OUT

18. I also conclude that the appeal site would not be a suitable location for new housing with regard to its location to services and the development strategy as it fails to comply with Policies SWDP2, SWDP4 of the SWDP and RE2 of the HCNDP, and paragraphs 105 and 112 of the Framework. These policies seek to ensure that development in the countryside is strictly controlled, that open countryside is safeguarded, that new development is not over reliant on car use, sustainable in terms of infrastructure and that applications for development should give priority to pedestrian and cycle movement.

Character and appearance

19. Policy SWDP25 of the SWDP requires that development proposals and landscaping schemes take account of the landscape setting. The character of the appeal site and its surroundings is defined by agricultural fields and paddocks surrounding Maisey cottage, a large, isolated farmhouse located next to agricultural buildings. The immediate surroundings are largely open and verdant. Jessamine Cottage is on the opposite side of the appeal site, similar in scale as Maisey Cottage, having a similar relationship with the open fields, being isolated like other farmhouses in the area are. Further along Gilberts End Lane is Brickley Drive which is an urban development of six large 2 storey houses with garages and gardens.
20. The Councils Landscape Officer describes the landscape type as Estate Farmlands and a copy of an information sheet has been provided to me by the appellant titled Landscape Type Information Sheet (LTIS). The landscape type description is of ordered agricultural landscape and in relation to built development the description states "small geometric plantations and groups of ornamental trees associated with large country houses. Settlement is largely restricted to discrete clusters of dwellings and occasional small estate villages".
21. The design of the proposed house would have more in common visually with the urban areas of Brickley Drive, being a large two storey house with garage of similar materials, it would not have the appearance of a large country house or be part of a cluster or an estate. The presence of an urban property here would reduce the openness and be an intrusion into the rural landscape. This impact would be amplified because of the higher ground level in relation to the highway. The proposed house would also be visible and prominent from the public footpath that stretches between Gilberts End Lane to Hanley Castle. The appellant suggests a condition to secure a landscape scheme to mitigate the visual impacts of the proposed house. However, no indicative proposals have been submitted. Moreover, the appeal proposes the loss of part of a hedge, the form of development proposed is not characteristic of that identified in the LTIS and the plot size is insufficient to provide suitable landscaping to reflect that described in the LTIS as being appropriate. On the basis of the information available I cannot be certain that the harm identified could be mitigated by a landscaping scheme. I also note that the Landscape Officer provides no strong objection to the proposed house, nevertheless I have found harm for the reasons stated above.
22. I conclude that the proposed house would result in harm to the character and appearance of the area and fails to comply with policies SWDP25 of the SWDP and RE2 of the HCNP. These policies seek to ensure that development in the countryside is strictly controlled, that development is appropriate to, and integrates with, the character of the landscape setting.

Other Matters

23. It is not clear from the evidence whether the submitted planning obligation to provide a contribution of £12,797 towards the cost of affordable housing, would meet the tests set out in paragraph 57 of the Framework. Although Council Officers have made a request and the suggested conditions include this requirement, no policies have been provided and insufficient detail is given to justify the requirement or amount. A CIL exemption form is provided by the appellant. The same planning obligation also seeks secure the development to be occupied by the person or persons who build the dwelling for the first three years after it is completed. However, as the planning obligation is not dated it cannot secure the intended obligations. Consequently, it cannot be relied upon.
24. In terms of benefits suggested by the appellant, 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, although these would be limited given that the proposed development would be only one house. Other benefits are that the proposal would provide an opportunity for the appellants to remain near to the village where they currently live. I also note some neutral effects raised such as the proposed house having broadband, cycle parking, electric vehicle charging points and that there is a lack of any third party objections. However, these matters and provisions would not outweigh the harm I have found above.

Housing land supply and self build housing provision

25. The appellant argues that the SWDP is silent on the matter of delivery of self and custom build dwellings. The application forms and appeal statement confirm that the appeal proposes a self build. 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.
26. The Council's Planning Officer Report confirms that there was a shortfall in provision of Self Build and Custom Housebuilding by 41 units. Although no update is provided, the Council's appeal statement is argued on the basis there remains a shortfall.
27. In such circumstances, paragraph 11(d) of the Framework indicates that the policies which are most important for determining the application are out of date, and that planning 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.
28. In this instance, the application is for a self build house and the Council has a shortfall in provision of such housing, so have a duty to have regard to this and to give enough suitable development permissions to meet the identified demand. However, this is only one policy of a basket of the most relevant policies which are all relevant to the determination of this appeal. When taken

as a whole, the development plan policies in relation to development strategy and accessibility are the most important in determining this application, and these policies are not out of date. Moreover, I have found that, because the planning obligation is undated, it cannot be relied upon to ensure that the proposed dwelling would be occupied as a self build unit. Consequently, the presumption in favour of sustainable development does not apply in this case. Even if this was not the case, the significant adverse impacts of granting planning permission would significantly and demonstrably outweigh the limited benefits, when assessed against the policies in the Framework taken as a whole, including those seeking to boost the supply of homes and achieve well designed places.

29. I have had regard to the details in appeal decision⁷ and the appellants argument, that for existing self-build and custom build permissions to count towards identified need, there would need to be evidence of specific restrictions which have been secured by planning obligation, which I do not have in considering the evidence of this appeal. However, as the Council agrees they have a shortfall of these housing types, I have not needed to take account of this matter further.

Conclusion

30. Therefore, as there are no material considerations that indicate that the appeal should be determined otherwise than in accordance with the development plan, as explained above, I conclude that the appeal should be dismissed.

S Crossen

INSPECTOR

⁷ APP/R1845/W/21/3284761