



Appeal Decision

Site visit made on 28 March 2023

by Mr JP Sargent BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 May 2023

Appeal Ref: APP/J1860/W/22/3302371

Land to the south-west of Elmhurst Farm, Hereford Road, Leigh Sinton, Malvern WR13 5EA

- 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 Bromford Housing Association against the decision of Malvern Hills District Council.
 - The application Ref 21/01153/FUL, dated 28 May 2021, was refused by notice dated 22 March 2022.
 - The development proposed is the erection of 24 affordable starter homes, and associated landscaping and infrastructure, comprising 24 entry level homes, 13 of which will be affordable rent and 11 will be affordable shared ownership.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. As part of the appeal the appellant submitted revised details that slightly modified the road layout within the scheme. I consider this did not prejudice any party and so have determined the appeal in the light of those plans.
3. In the application form the site is described as to the south-west of Elmhurst Farm, but I have noted that elsewhere throughout the submissions it is called Elmhurst Farm and so have favoured that name.

Main Issues

4. The main issues in this case are
 - a) the effect on the development strategy and the scheme's impact on the character and appearance of the area,
 - b) its effect on the Significant Gap between Leigh Sinton and Malvern,
 - c) whether it would constitute a sustainable location for development and
 - d) if development plan conflict is caused by all or any of the above issues, whether material considerations would justify a decision other than in accordance with the development plan (the planning balance).

Reasons

The development strategy and its effect on the character and appearance of the area

5. The appeal site is part of a larger field that is currently used for growing Christmas trees. It is immediately adjacent to a modern development of 35 houses on Haywood Drive (referred to in the submissions sometimes as Bluebell Walk), which itself is outside of, but abutting, the settlement boundary of Leigh Sinton as defined in the *South Worcestershire Development Plan* (the Local Plan). As such, in that plan the appeal site is some 175m from the designated settlement edge. *The Parishes of Leigh and Bransford Neighbourhood Plan* (the Neighbourhood Plan), which was made in November 2022, extends the settlement boundary to include the Haywood Drive development, and so in that plan the appeal scheme would lie just beyond. Either way, the site is outside the settlement boundary in the open countryside.
6. Local Plan Policy SWDP2 says one of the principles behind its development strategy is to safeguard the open countryside. It adds that in such areas beyond the settlement boundary development will be strictly controlled, and lists a number of specified development types that will be supported. This is reflected in Neighbourhood Plan Policy LB/H/2, and the appeal scheme falls under none of the development types given. I therefore consider that housing here is contrary to the development strategy.
7. Amongst the reasons for this policy is the need to locate development where it has sustainable access to local services and employment, and I will explore this under my third main issue below.
8. However, a further reason for the approach in Policy SWDP2 is a desire to maintain the high quality of the open countryside. This is reflected in Local Plan Policies SWDP21 and SWDP25, which require development to integrate effectively into its surroundings, and the landscape setting.
9. The site is enclosed to a great extent on 3 sides by mature hedging, and (apart from where the access is to be formed) this could be safeguarded. However, the development would be clearly visible from the public footpath that runs along its south-west side, as well as from the footpaths that approach from the south. From these, the proposal would be extending the settlement beyond its boundaries, introducing a relatively dense and suburban housing scheme onto a site that currently contributes positively to the intrinsic character and beauty of this rural area. I appreciate that when looking from the south the site is concealed to some extent by the Christmas trees growing on the part of the field lying outside of the appeal site. However, these by definition are temporary features, and their long-term retention is highly unlikely.
10. Views of the development would also be possible from Hereford Road. The upper floor and roof of each house on Plots 1-7 would be clearly visible above the retained hedge along this boundary, as is the case with the properties on Haywood Drive. Moreover, when travelling along this road the development would appear to extend the village. On the south side of Hereford Road are a number of houses to the south-west of the appeal site, further from the village. These though are sporadic properties that are now clearly separated and divorced from the built-up area of Leigh Sinton, mainly by the open nature of the appeal site itself. As a result, infilling the site in the proposed manner

would elongate the settlement further along the road, partly as a result of the development before me, but also because it would diminish the separation of the housing beyond.

11. Accordingly, I accept that the scheme's impact in this regard is tempered, to some extent, by the manner in which it would be strongly contained by the boundary hedging. Despite this though, from these viewpoints around the site I consider the development would detract unacceptably from the character and appearance of the area, as it would elongate the village and introduce strong urban form in an attractive piece of countryside.
12. While the proposed landscaping may soften the visual impact of the scheme, it is unlikely to mitigate this harm totally. The scheme would also be seen against the Haywood Drive development, and would appear to be an extension of it. Although this would reduce any sense of visual isolation, such a contention could be applied to many schemes adjacent to settlements, and, if accepted, would lead to a cumulative erosion of the countryside's character.
13. Looked at in the wider landscape, and especially viewed from the Area of Outstanding Natural Beauty around Malvern, I consider the impact of the development would be substantially reduced by the distances involved, the topography and the existing trees and hedges. From where it would be visible in those views it would therefore not be incongruous.
14. Taking these factors together, I therefore conclude that the urbanising effect of the development beyond the settlement boundary would be contrary to the spatial strategy and would detract unacceptably from the character and appearance of the countryside, in conflict with Local Plan Policies SWDP2, SWDP21 and SWDP25, and Neighbourhood Plan Policy LB/H/2.

The effect on the Significant Gap

15. The appeal site falls entirely within what is defined in the Local Plan as a Significant Gap, some 1.35km wide, between the south side of Leigh Sinton and the northern edges of Malvern. Local Plan Policy SWDP2 seeks to maintain the open character of the Significant Gaps shown on the Proposals Map. The purpose of these gaps is to serve as a visual break and a clear separation between rural settlements and adjacent urban areas, to protect the identity and setting of settlements, and to provide additional protection to open land. The policy's supporting text says acceptable development in those gaps may include certain specified works commonly found in rural areas. This approach is followed through in the Neighbourhood Plan that identified protecting this gap as one of its main objectives, encapsulated in its Policy LB/H/5.
16. Given its urban character, this development would diminish the separation between the settlements and have some effect on the openness of the gap. I accept the reduction of the gap would be slight, reducing its width by only a few metres in absolute terms. However, it is to be expected that many forms of development that would erode the openness would not, of themselves, reduce the size of the Significant Gap by any appreciable degree. Indeed, it is difficult to anticipate a scheme being proposed that would substantially fill this 1.35km gap, especially given the policy basis concerning the protection of the countryside. Rather, in my opinion the concern rests on the cumulative effect that would result from many smaller developments coming forward. As such,

although its size means the effect on the gap is limited, the fact that it is a slight reduction in the gap's size does not overcome the conflict with policy.

17. Balanced against this though, the site is at the periphery of the designation. Whilst it is a little way into the Significant Gap as defined in the Neighbourhood Plan, the Significant Gap is shown as including the Haywood Drive development despite that development being within the settlement boundary. Moreover, Hereford Road does not run across the Significant Gap but rather bounds its north-western corner and for a limited distance only. Consequently, for those passing along that road there is no perception of the separation between Leigh Sinton and Malvern. As a result, there would be no appreciation of the Significant Gap being reduced when on that road, and I am aware of few if any locations where a reduction in the width of the gap would in fact be readily perceived. I also have no reason to consider that, beyond the effect on the character and appearance discussed above, the scheme would harm the setting or identity of Leigh Sinton.
18. Accordingly, I conclude the development would fail to maintain the visual gap and the separation the Significant Gap provides between Leigh Sinton and Malvern, and so in this regard would conflict with Local Plan Policy SWDP2 and Policy LB/H/5 in the Neighbourhood Plan. However, the location of the site on the edge of the gap and the limited effect the scheme would have on the sense of separation provided by the gap, mean the harm caused to the objectives of these policies would be lessened.

Access to services

19. In Appendix D of the Local Plan Leigh Sinton is listed as one of the Category 2 villages. These provide varying ranges of local services and facilities and they are places where infill development within the defined settlement boundaries is acceptable in principle. It was suggested that, in the light of the *2019 Village Facilities and Rural Transport Study*, the status of the village should be changed to the lower order Category 3 following the loss of some services. However, that document does not appear to have the status of being part of the development plan, and so I cannot deem it to supersede the designation found in the Local Plan. In any event, as the site lies outside of the settlement boundary this policy position does not directly support the scheme. However, it does imply there is a certain level of service provision on which the scheme's residents can draw.
20. It is some 600m from the site to the existing bus stop, though the appellant is making a contribution for a new one. The bus service through the village runs between Worcester and Ledbury, and may be of some benefit in allowing access to shops, services and rail links in those towns. However, it is a limited service and would not enable access to employment opportunities during a conventional working day (a factor that could mean the village will move into Category 3 in due course). I was told of no public transport connections to Malvern or the station at Malvern Link. Although they were referred to in the 2014 appeal decision concerning the Haywood Drive scheme, I can only assume they have been discontinued since. Therefore, the location of the site in relation to employment opportunities is limited. Despite this, there is an indicative allocation in the Neighbourhood Plan for 52 dwellings.
21. By the bus stop is a village shop. The public house though is somewhat further from this appeal site, while the primary school is on the northern edge of the

village, roughly 1.3km away. I accept that these distances are towards the upper end of how far residents will be expected to walk, but I nonetheless consider they are not so far as to mean walking would be an unreasonable expectation or unlikely. I also accept the connecting pavement is in places narrow, while it is necessary to cross Hereford Road, an 'A' road, but I consider these factors would not discourage pedestrian access to the village's services unduly.

22. I therefore recognise there is limited employment in the village and the public transport system does not enable ready access to employment elsewhere. The *National Planning Policy Framework* (the Framework) says opportunities to maximise sustainable transport solutions will vary between urban and rural locations, and I consider rural settlements will not be able to serve the day-to-day needs of residents as well as larger urban centres. This though does not mean they should not be subject to new housing development.
23. Accordingly, taking into account the development plan designation for Leigh Sinton but acknowledging the site's limitations, I nonetheless conclude there would be opportunities for reduced reliance on the car and this would not be an unsustainable location for this development. Consequently, on balance, it would not be in conflict with Local Plan Policies SWDP4 and SWDP21, which seek development with good access to services and limited car dependency, whilst, in this regard, any conflict with Local Plan Policy SWDP2 would not be a basis to resist the scheme.

Other Matters

24. Vehicular access to the site would be through Haywood Drive, but I have no reason to consider there would be any adverse effects on highway safety as a consequence. While some existing residents would have to reverse off their drives onto the access road, forward visibility would be satisfactory. Given the amended plans submitted with the proposed development, I also find that the internal arrangement within the scheme before me would provide suitable circulation for any vehicles visiting the site.
25. Traffic entering and leaving the site would be passing the frontages of some of the Haywood Drive houses, but these are set back from the carriageway and the arrangement is no different to what is commonly found in housing estates across the country. Given the scale of the proposal, I therefore consider it would not give rise to unreasonable noise, or danger. While some existing houses would lose a view over the countryside, that is not, of itself, a matter that can be taken to resist the scheme, and the interface distances are satisfactory. Accordingly, the scheme would not have an unacceptably adverse effect on living conditions.
26. As the site is in the countryside, it is to be expected that wildlife currently uses it to forage and maybe even as habitat. However, I have no basis to find the scheme's ecological impact would be unacceptable. I also have no grounds for considering any contamination would stand in the way of this development.
27. A legal agreement has been submitted to secure the delivery of the entirety of the scheme as affordable housing, as well as the provision of necessary contributions towards highways/transport matters, education and open space. I consider these contributions and commitments accord with Regulation 122 in

the *Community Infrastructure Levy Regulations 2010* and are necessary to make the development acceptable in planning terms.

Other material considerations and planning balance

28. Section 38(6) of the *Planning and Compulsory Purchase Act 2004* says development should be in accordance with the development plan unless material considerations indicate otherwise (the planning balance).
29. In this case, I have found development plan conflict arising from the site's location outside of the settlement boundary and in the Significant Gap, and its impact on the character and appearance of the countryside.
30. Balanced against this, the Council accepts it has a shortfall, albeit a slight one, in its 5 year housing land supply, being able to deliver only about 4.92 years. In contrast though the appellant contends there is a greater shortfall, seemingly saying only a 4.3 year supply can be secured. Reference was also made to a suggested greater shortfall that was aired in relation to the Leigh Sinton Farms appeal, but in that decision the Inspector committed to no firm figure as it had no bearing on their findings. As such, it is not a figure on which I can rely. Either way, the provision of 24 units in a District where there is currently a shortfall would be a benefit to which significant weight is attached.
31. A further material consideration offered by the appellant is that the proposal is an entry-level exception site. Such sites are defined as those that provide entry-level homes suitable for first-time buyers (or equivalent for those looking to rent), and they must be on land not allocated for housing, they must be adjacent to a settlement, and they must be proportionate to the settlement (Framework paragraph 72 and Glossary entry).
32. The 2018 version of the Framework stated that the development of entry-level exception sites should be supported by decision-makers. In a Written Ministerial Statement (WMS) of May 2021 though, the Government said the entry-level exception sites had not delivered affordable housing to the extent desired. The WMS went on to announce that the Government was therefore 'replacing' that policy with a policy for First Homes exception sites, which are still affordable housing but have slightly different defining criteria, and this policy was to become operative at the end of June 2021. The *Planning Practice Guidance* explains how the First Homes exception sites policy will be applied, and for this it continues to draw on the WMS. However, in July 2021 (and so after the date when the First Homes exception sites policy became operative), the current version of the Framework was issued, which says it sets out the Government's planning policies for England and is a material consideration in decision-making. Despite the WMS, this most recent version of the Framework still advocates support for entry-level exceptions sites, whilst making no mention of First Homes exception sites. Consequently, whilst I have noted the WMS, as the Framework is the more recently published document I consider the delivery of an entry-level exception site to be a material consideration that is supported in the Government's planning policies for England.
33. The appeal scheme is entirely for affordable housing, and this has been secured through the legal agreement. The land is also not allocated for housing and the development would be less than 5% of the size of Leigh Sinton, so would not be a disproportionate addition. Whilst it is about 175m from the settlement

boundary in the Local Plan, it is adjacent to the settlement boundary in the more recent Neighbourhood Plan. In any event, when assessing whether a site is adjoining a settlement for the purposes of this guidance, I see no reason why the development plan designations should be determinative. Rather, regard should be given to the situation on the ground, where the scheme would be seen right next to a modern housing estate on the edge of the village. Finally, whilst entry-level exception sites should not compromise the protection given to areas or assets of particular importance in the Framework and should not be permitted in National Parks, Areas of Outstanding Natural Beauty or the Green Belt, this site is within no such area or affects any such asset. Accordingly, the scheme before me complies with all of these factors.

34. In considering the Framework's approach for entry-level exception sites, as it says that they need to be '*adjacent*' to settlements on land not allocated for housing, it does not require the developments to be within the settlement, despite the general emphasis in the planning process to locate housing in such boundary areas. Rather, it is supportive of sites such as this in the countryside but just outside of the settlement, even though the location may not be fully in accordance with the development plan's spatial strategy. I therefore accept that in this regard such schemes would often be in conflict to some degree with the development plan.
35. Moreover, in the Framework there is no specific reference to access to services or the level of service provision that is required in the settlement to which the entry-level exception site is adjacent. Indeed, saying such sites are adjacent to settlements, it must also be accepting access to the settlement's facilities (whatever they may be) may not be as good as for housing in the settlement itself. Whilst this site is also in a Significant Gap, there is nothing in the Government's guidance that means entry-level exception sites are unacceptable in principle in such a designation. Accordingly, the delivery of an entry-level exception site here is a matter to which I attach significant weight.
36. I was told of no relevant development plan policies for entry-level exception sites in the Neighbourhood Plan or the Local Plan, and so this too is a further reason to engage Paragraph 11(d).
37. There was disagreement about whether there was a need for such housing in Leigh Sinton, but there nonetheless appears to be a District-wide need for affordable accommodation and so this is a further benefit to which I attach significant weight. Whilst the site is available now, that could apply to many sites and so is a matter to which I afford limited weight. I accept there would also be some economic benefits for the village and during construction.
38. Paragraph 11(d) of the Framework states that where there are no relevant development plan policies, or where there is a shortfall in housing land supply meaning the development plan policies are deemed to be out-of-date, planning permission should be granted unless any adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. However, Framework paragraph 14 goes on to say that, when considering '*applications that involve the provision of housing*' in situations where Framework paragraph 11(d) applies, if 4 stated criteria all apply, '*the adverse impact of allowing development that conflicts with the neighbourhood plan is likely to significantly and demonstrably outweigh the benefits*'. I have had no detailed evidence put to me to show any

of these 4 criteria have not been met, and so I assume they all apply and Framework paragraph 14 is engaged.

39. An additional 24 affordable houses would be of benefit in a District where there is a shortfall in housing land in general and in the delivery of affordable units in particular. I also accept the benefit arising from Government's apparent support for entry-level exception sites. However, even taking the appellant's position concerning the scale of the shortfall in housing land supply, I consider it has not been shown that these benefits, even if weighed with the other benefits identified, are so great as to support a departure from the 'likely' outcome in Framework paragraph 14. As such, I conclude they do not justify the scheme in the face of development plan conflict.
40. In coming to this view, I appreciate that entry-level exception sites, being on unallocated land adjacent to settlements, are by their nature likely to be not in accordance with the development plan. That still means though that they could conflict with the neighbourhood plan, and so engage Framework paragraph 14.
41. I have also noted the recent appeal decision at Leigh Sinton Farms. That decision though pre-dated the Neighbourhood Plan being made while the Inspector was weighing a different scheme in a different context. As such, the balancing exercise they undertook would have been materially different.

Conclusion

42. For the above reasons I conclude the appeal should be dismissed.

JP Sargent

INSPECTOR