



Appeal Decision

Site visit made on 20 January 2023

by Lewis Condé Msc, Bsc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 May 2023

Appeal Ref: APP/J1860/W/22/3304685

Land at North Lodge, Main Road, Hallow, Worcester WR2 6HP

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant permission in principle.
 - The appeal is made by Mr Chris Kilburn against the decision of Malvern Hills District Council.
 - The application Ref 21/02263/PIP, dated 6 December 2021, was refused by notice dated 9 February 2022.
 - The development proposed is Permission in Principle for residential development of up to three dwellings and associated vehicular access.
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Decision

1. The appeal is allowed.

Application for costs

2. An application for the award of costs has been made by the appellant and is subject to a separate decision.

Preliminary Matters

3. The proposal is for permission in principle. Planning Practice Guidance (PPG) advises that this is a two-stage process and alternative way of obtaining planning permission for housing. The scope of the first stage (or 'permission in principle'), is to establish whether a site is suitable in principle for development and is limited to consideration of the location, land use and amount of development. The second stage ('technical details consent') is when the detailed development proposals are assessed. This appeal relates to the first stage.
4. In respect of residential development, an applicant can apply for permission in principle for a range of dwellings by expressing a minimum and maximum number of net dwellings as part of the application. In this instance, permission in principle has been sought for the erection of a maximum of three dwellings at the appeal site. For the avoidance of doubt, I have determined the appeal on that basis, having regard to the requirements of the Order and the PPG.
5. A site plan showing the layout of three dwellings was submitted with this appeal. However, the plan is marked as illustrative, and I have had regard to it only insofar as it is indicative of a development for three dwellings.
6. Late evidence was submitted by the appellant in the form of a statement of common ground (SOCG) from another appeal that the Council is currently

involved with¹. The SOCG showed that the Council has recently acknowledged that it was unable to demonstrate a five-year supply of housing land (as of March 2023). Although late evidence, it is important that the appeal is determined based upon the latest housing land supply position. Accordingly, both main parties were given further opportunity to comment upon the Council's 5 year housing land supply (5YHLS) position. As such, I am satisfied that no party has been prejudiced by my acceptance of the late evidence. I have therefore proceeded on that basis and will return to the issue of 5YHLS later below.

Main Issue

7. The main issue is whether the site is suitable for residential development, having regard to its location, the proposed land use and the amount of development, taking into account the Council's spatial strategy and impact on the character and appearance of the area.

Reasons

8. The appeal site lies outside any defined development boundary within the South Worcestershire Development Plan 2016 (the Local Plan). It is therefore within the countryside for the purposes of planning policy. However, due to the site's proximity to other residential development, the proposal would not be isolated in the context of paragraph 80 of the National Planning Policy Framework (the Framework).
9. Local Plan Policy SWDP2 sets out the development strategy and settlement hierarchy for the area. It states that development in the open countryside will be strictly controlled, other than for specified exceptions. There is no evidence before me to suggest that the proposed development would adhere to any of the exceptions, as such the proposal is contrary to Policy SWDP2.
10. However, the justification for the restrictions imposed by SWDP2 primarily relate to the protection of the character of the countryside, including the open character of identified 'significant gaps' and to ensure development is focused where it would have good accessibility to facilities and services.
11. The appeal site comprises garden land associated with a large-detached property 'North Lodge'. The site lies approximately 350m to the north of the settlement boundary for Worcester. It is set amongst ribbon development of residential dwellings stretching out from Worcester's boundary along the A443 in a linear arrangement. The site also lies approximately 650m to the south of Hallow village.
12. I observed on my site visit that the site was served by a wide, continuous, pavement, laid across relatively flat terrain, that linked the site to both Worcester and Hallow. Although the route did not contain streetlighting, it nevertheless offered a suitable opportunity to access a range of services and facilities on foot in both Harrow Village and a relatively nearby neighbourhood shopping centre. Additionally, local bus stops connecting the site to Worcester City Centre and Harrow village are within approximately 100m of the site.

¹ Statement of Common Ground dated 16th March 2023 from Appeal Reference: APP/J1860/W/22/3306186, Land at Berrow Green Road, Martley.

13. Occupants of the appeal site would therefore not be entirely dependent on the use of private vehicles, with sustainable transport options available. Indeed, the Council has acknowledged through its appeal statement that the site is in a sustainable location, close to a 'Category 1 Settlement', in easy walking distance of services and with good public transport links.
14. Development of the site for between two and three dwellings would diminish the openness of the 'significant gap', which I understand forms part of the wider Hallow Historic Parkland in this location. However, the likely visual impact on the wider countryside and rural setting would be limited, with the impact mainly being focused on the site and its immediate surroundings, in part due to significant screening from mature vegetation. Furthermore, despite the site adjoining open countryside, its character is not one of an undeveloped rural appearance. Rather it already has the appearance of existing residential curtilage, containing domestic paraphernalia including a tennis court. Development of the site would also be located adjacent to existing built form.
15. Whilst an indicative layout has been provided, I do not have full details of the scale and design of the final proposed development, including any landscaping arrangements. Much would therefore depend on the precise design of any scheme that may come forward at technical design stage. However, I find it conceivable that a proposal could emerge that would not demonstrably harm the character and appearance of the surrounding countryside or the 'Significant Gap'. This is based on the site's specific characteristics in terms of its visibility and relationship to existing built form.
16. Overall, the principle of additional growth in this location would not accord with the spatial strategy established under Local Plan Policy SWDP2. However, in light of the reasoning behind the policy, the site's relationship to facilities and services, as well as the potential for the scheme to not harm the character and appearance of the countryside, I attach modest weight to this conflict.
17. The Council also referred to Policy SWDP1 of the Local Plan and the Framework in its reason for refusal. Policy SWDP1 sets out a presumption in favour of sustainable development and reflects the provisions of the Framework in this regard. These matters will be covered further in my planning balance below.

Other Matters

18. I have been made aware by third parties that the appeal site lies within the North Lodge to Parkfield Estate, which contains Grade II listed buildings and high-quality specimen trees. However, I am satisfied that the proposal could be designed so as not to affect the significance of these buildings or cause harm to trees.
19. Concerns raised by third parties regarding the design of the proposed development and its effect on highway safety are not matters which would fall within the scope of consideration for the first stage of the permission in principle route. These issues will need to be addressed as part of the technical details stage and there can be no guarantee that just because permission in principle has been granted, that approval of technical details will follow. It takes approval of both stages for a planning permission to be secured.
20. Reference has been made to a similar proposal for development that has previously been refused at Oakleigh Avenue, but I do not have any specific

details of that case or its context to determine whether it is comparable to the scheme before me. In any event, the appeal has been determined based on its own planning merits.

Housing Supply

21. I have been made aware of various recent appeal decisions from 2023 that have shown the Council has been unable to demonstrate a 5YHLS. Meanwhile, very recent appeal decisions² from May 2023 found that the Council's housing land supply was deemed to be in the region of between 4.69 and 4.92 years.
22. Indeed, the Council has also acknowledged that following publication of The South Worcestershire Councils Five Year Housing Land Supply Report (December 2022) (SWCFYHLS)³, several development sites that were contributing towards its 5YHLS have been found not to be deliverable within the relevant period. Consequently, I am aware that the Council has accepted during some recent appeals that it was unable to demonstrate a suitable up-to-date provision of housing land.
23. Despite this, the Council now contends that it can demonstrate a 5YHLS. This is largely based upon the findings of the South Worcestershire Council's Five Year Housing Land Supply Report Addendum, published in April 2023 (the Addendum Report).
24. The Addendum Report has sought to re-examine both the housing need and supply positions for the relevant South Worcestershire authority areas. The Council's housing need requirements have been updated based upon the latest release of Office for National Statistics (ONS) data for 'House Price to Work-place based earnings ratio'. This in turn has resulted in an adjustment to the affordability ratio for the area that has been used in the standard method for calculating housing supply. Fundamentally, this has led to Malvern Hills District Council identify a reduced housing need requirement for its area. Based on the reduced needs figure, the Addendum Report suggests that Malvern Hills can demonstrate a housing land supply of 5.24 years, even when accounting for a modest reduction in supply of deliverable dwellings compared to the December 2022 Report.
25. The Addendum Report is an interim statement and not an Annual Position Statement as set out at paragraph 75 of the Framework. In preparing the Addendum Report, it is also unclear as to what extent engagement has taken place between the local planning authority and developers or other parties that may have an impact on the delivery of dwellings. Therefore, despite a reduction in deliverable sites since the December 2022 SWCFYHLS, I remain sceptical as to whether the deliverability of all sites outlined within the Addendum have been examined in detail.
26. Furthermore, I have fundamental concerns regarding the robustness of the calculation of the 5YHLS within the Addendum Report. I appreciate that the PPG recommends that the most recent ONS median workplace-based affordability ratios should be utilised in the standard methodology for calculating annual local housing need. However, in this instance, the Council has updated its need requirement to effectively account for the period 2023 -

² APP/J1860/W/22/3309338 & APP/R1845/W/22/3309343 - Both relate to Land off Areley Common, Astley Cross, Stourport on Severn DY13 0JW

³ Accounting for a base date of 1st April 2022.

- 2028 but appears not to have correspondingly updated its supply position to cover the same period.
27. Instead, it seems that at least in respect of Malvern Hills, the Addendum Report is reliant upon the previous supply position at its April 2022 base date, bar some sites that have subsequently been demonstrated to not be deliverable within the relevant five-year period (i.e. 2022 – 2027). It therefore does not take account of the latest housing completions or commitments within the authority area.
28. Effectively, the Addendum Report has calculated its 5YHLS based on mismatching periods of need (2023-2028) and supply (2022-2027). Given that the standard method for calculating local housing need also considers past delivery, this also raises concerns over the prospect of double counting resulting in an inaccurate assessment.
29. Notably, the housing completions for the year 2022/23 will influence the affordability ratio used when setting the minimum local housing need for the base year 2023. Hence, if considering the 5YHLS over the period 2022-27 against the minimum local housing need from 2023, the supply in 2022/23 will be included in both the supply but also influenced the need.
30. In light of the above, I do not consider that the findings of the Addendum Report provide an accurate representation of the Council's current 5YHLS position. Previous inadequacies that have been outlined in respect of the Council's Interim Housing Land Supply Position Statement published in August 2022, also place further doubt in my mind over the robustness of the findings of the Addendum Report.
31. Finally, the Council has also referred to an appeal decision from May 2023 (ref: APP/J1860/W/22/3304214) in which the Inspector accepted that the Council could demonstrate a 5YHLS based upon the findings of the December 2022 Monitoring Report. However, it is clear from the appeal decision that no substantive evidence was submitted to refute the Council's position in that appeal. By comparison, there is a significant level of evidence before me that together indicates the Council is unable to demonstrate a 5YHLS.
32. Taking all these points together, I find that at this the Council is unable to demonstrate a 5YHLS. In these circumstances, Paragraph 11(d) of the Framework is engaged. This indicates 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.

Planning Balance and Conclusion

33. The Council highlights that the Hallow Neighbourhood Development Plan (made June 2021) (the HNDP) has been made within the last two years. As such, it suggests that Paragraph 14 of the Framework is of relevance. This states that the adverse impact of allowing development that conflicts with an adopted Neighbourhood Plan is likely to significantly and demonstrably outweigh the benefits⁴. Given the importance which the Government attaches to adopted Neighbourhood Plans the effect of this provision is to place significant weight

⁴ Subject to various qualifying criteria including that the neighbourhood plan became part of the development plan two years or less before the date on which the decision is made.

- on its policies. I am also mindful of Paragraph 15 of the Framework which highlights that the planning system should be genuinely plan-led.
34. The Council did not refuse the original application based on policies contained in the HNPD. My attention has however been drawn to Objective 1 of the HNPD along with Policy HA1.
35. Policy HA1 of the HNPD allocates a site for housing development to meet the village's requirements until 2041. The policy also sets out various criteria in relation to the delivery of development at that site. However, the policy does not set out intentions for housing development at other locations. It is therefore not directly relevant to the current proposal. As such, the appeal scheme is not in conflict with the policy.
36. I appreciate that Objective 1 of the HNPD sets out an aspiration to promote managed, sustainable housing growth within the development boundary for Hallow village and on allocated sites. The Objective is silent on the approach to development outside of the settlement boundary. However, the plan's supporting text indicates that land beyond the development boundary is defined as open countryside and relevant policies of the SWDP would apply, which the HNPD does not seek to replace or duplicate. Despite this, in reaching my decision I have had regard to the specific wording of the development plan policy, as opposed to perceived compliance with its objectives. In this regard, the proposal is not in conflict with the adopted policies of the HNPD. Consequently, I do not find Paragraph 14 of the Framework to be applicable in this instance.
37. The appellant has also argued that Paragraph 14 of the Framework is not relevant due to the Council being unable to demonstrate a 3-year supply of housing land. However, from the recent appeal decision previously referred to, it seems that the Council can demonstrate a supply in excess of 4.5 years. Whilst I note, the appellant's arguments surrounding the deliverability of various sites in the authority area, based on the evidence before me, I cannot reach a definitive conclusion in respect of the precise housing land supply figure. Nevertheless, given my findings in respect of the HNPD policy, this is not determinative as to whether Paragraph 14 should apply.
38. The appeal scheme would deliver up to three new dwellings, which would contribute towards the shortfall in housing supply, albeit the benefits of such would not be significant given the scale of development. There would also be economic benefits, both during construction and afterwards, associated with the development. I attach moderate weight to these benefits.
39. In the context of the development plan, I have found that the proposal would conflict with Policy SWDP2 of the Local Plan. However, given the scale of the scheme, the potential absence of harm to the character and appearance of the countryside and the potential for travel by non-car modes, the level of harm associated with this policy conflict would be modest. Accordingly, I also attach moderate weight to the conflict with the development plan.
40. Consequently, the benefits of the proposal would be moderate, as would its adverse effects. With this in mind, I find that the adverse impacts of the proposal would not significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. As such, there are material considerations, specifically those relating to the appeal site's

situation and circumstances and approach of the Framework, which indicate a decision other than in accordance with the development plan. Consequently, I also do not find the proposal to be in conflict with Policy SWDP1 of the Local Plan.

41. The appeal is therefore allowed. The PPG makes it clear that it is not possible for conditions to be attached to a grant of Permission in Principle, whose terms may only include the site location, type, and amount of development.

Lewis Condé

INSPECTOR