



Appeal Decision

Site visit made on 14 November 2023

by G Dring BA (Hons) MA MRTPI MAUDE

an Inspector appointed by the Secretary of State

Decision date: 07 February 2024

Appeal Ref: APP/D1835/W/23/3322243

The Fairway, Worcester WR4 9UH

- 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 Tustin Holdings Ltd against the decision of Worcester City Council.
 - The application Ref 22/00079/OUT, dated 25 January 2022, was refused by notice dated 25 November 2022.
 - The development proposed is outline planning permission for development of up to 6 residential dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the site address above from the Council's decision notice as it provides a clearer description of the site location when compared to the application form.
3. The application seeks outline planning permission with only access to be considered at this stage. Appearance, landscaping, layout and scale are reserved matters to be considered in the future. I have taken any indication of any reserved matters shown on the submitted drawings, to be illustrative.
4. A Unilateral Undertaking (UU) has been provided which intends to secure a public open space contribution should the appeal be allowed. However, as the UU is not dated and therefore not complete it cannot secure the intended contribution. Consequently, it carries no weight and has no bearing on my decision.
5. Following the refusal of the application the revised National Planning Policy Framework (the Framework) has been published. Comments were sought from the main parties on this, and where received have been taken into account in my decision.

Main Issues

6. The main issues are the effect of the proposal on, the character and appearance of the area, ecology and biodiversity and the supply of green space locally.

Reasons

Character and appearance

7. The appeal site is a sloping site approximately 0.4 hectares in size and comprises scrub, grasses and bramble. A line of trees is located towards the northern boundary and a mature hedgerow along the western boundary separates the appeal site from the adjacent Public Right of Way (PRoW) and a Local Nature Reserve that also forms a public open space. Further trees are located along the eastern and southern boundaries of the site, some of which are covered by Tree Preservation Order TPO306 (TPO). To the north is residential development of suburban character. To the south and east are established areas of woodland which sit within the wider open space.
8. Despite the boundary hedgerow, the vegetation contained within the appeal site is visible from the adjacent open space and does appear as a significant vegetative buffer largely screening the new development beyond it. This provides for a softer edge between the suburban character and the open space and contributes positively to the verdant character and appearance of the area.
9. Viewpoints 5 and 6 provided in the rappor Landscape Appraisal June 2022 (LA) demonstrate that views towards the appeal site from within the built up area to the north of the appeal site are not overly sensitive to change due to intervening built form. LA viewpoint 3 shows that the appeal site is largely screened by existing vegetation and trees when looking north.
10. However, LA viewpoints 1, 2 and 4 all taken from the PRoW network within the adjacent open space provide views of the appeal site. The existing dwelling, 25 The Fairway, which sits adjacent to the appeal site, and the new development recently constructed are visible from the PRoW between the existing trees. As a result of the appeal site sitting further south and in front of the recent development, the proposal would appear prominent from those positions along the PRoW and within the adjacent area of open space.
11. I accept that other rear boundaries of properties bound the adjacent open space and are visible from users of the PRoW network. Nonetheless, the presence of the various domestic boundary treatments does not make a positive contribution to the character and appearance of the area.
12. Whilst I recognise the details provided are indicative, the scheme does identify the inclusion of some green space, this is indicated on the Landscape Strategy Plan. However, the removal of the trees, including within the northern section of the appeal site to enable access into the site, the fact that the appeal site protrudes further south than the adjacent development, along with the number of dwellings proposed, would erode the current verdant character of the appeal site.
13. There are existing trees along the southern and western boundaries, some of which are subject to a TPO, identified in the submitted Tree Constraints Report. It is not clear from the information before me, whether the number of dwellings proposed could be appropriately located on site without having a detrimental impact on these existing trees, in terms of suitable separation distances or avoiding the creation of future pressure for removal or extensive pruning works. The loss of trees would add to the harm to the character of the area.

14. The proposal would result in ground and engineering works in order to provide a development that largely reflects the finished floor level of the neighbouring residential development, given the sloping nature of the site. Whilst I accept that the works necessary could be carried out, the extent of the works needed is not provided in the form of topographical information or a cross section drawing. I am therefore uncertain of the effect that these works, including the required retaining features, would have on the character and appearance of the area.
15. I acknowledge that the application is outline in form and that appearance, landscaping, layout and scale are reserved matters. The specific details of boundary treatments, planting schemes, lighting, circulation routes and the design, position and height of dwellings would all be future considerations. However, in terms of the number of dwellings proposed, taking into account the site constraints, I am not satisfied that the proposal could be appropriately integrated within this transitional space between the suburban area and the open space adjacent without being harmfully prominent, particularly in views from the adjacent open space and PRow.
16. I therefore find that the proposal would be harmful to the character and appearance of the area. It would be contrary to Policies SWDP 21 and SWDP 25 of the South Worcestershire Development Plan Adopted February 2016 (SWDP) which seek, amongst other things, that development proposals complement the character of the area, respond to surrounding buildings and the distinctive features or qualities including the visual interest of the townscape and landscape quality of the local area and integrate with the character of the landscape setting. The proposal would also be contrary to the relevant paragraphs of the Framework.
17. Although the Council say that the proposal would not represent infill development, there is no requirement under any of the policies referred to in the Council's decision notice for a proposal to be infill development in order to be acceptable, nonetheless, it still conflicts with the policies overall.
18. The Council's decision also refers to the Council's Supplementary Planning Documents, but I have not been referred to a specific document. The Council also refer to the emerging Warndon Neighbourhood Plan, but no conflicts with any specific draft policies are identified. I understand that the Neighbourhood Plan has been through a consultation stage but has not yet been submitted for examination and therefore remains at an early stage of the plan preparation process and therefore I only attribute limited weight to it.

Ecology and biodiversity

19. A Preliminary Ecological Appraisal (PEA) was submitted with the planning application. Mitigation measures identified as being required within the appeal site include allowing for adequate root protection zones around retained trees and areas of hedgerows, new tree planting greater than or equal to that lost, mitigation strategy and relocation programme in respect of reptiles, an appropriate lighting scheme and a precautionary approach to site clearance.
20. The PEA also identifies that there would not be a direct impact on the adjacent Local Nature Reserve as a result of the proposal, but that mitigation would be required to ensure no indirect impacts including pollution and soil run-off during construction, disturbance (e.g. noise, lighting, vibrations) to associated

wildlife, increased recreational pressure and risk of accidental introduction and spread of non-native species and/or pathogens. Mitigation identified as necessary in this regard includes an appropriate drainage strategy, lighting plan, precautionary measures during working and the incorporation of vegetated buffers between the designated site and the built development.

21. Whilst the illustrative plans indicate an intention to provide green space within the appeal site and the PEA identifies that the mitigation measures set out would provide net gains, limited information is set out on the resultant biodiversity net gains compared with the existing situation.
22. I acknowledge that there would be space within the appeal site to provide some of the mitigation measures identified. However, I am not satisfied, based on the evidence before me that an appropriate vegetative buffer between the proposal and the adjacent Local Nature Reserve could be adequately provided within the appeal site boundary. The width of the site at certain points is limited which I consider would constrain the delivery of the number of dwellings proposed alongside the necessary vegetative mitigation along the western boundary.
23. The appellant asserts that planning conditions could be used to ensure the recommendations of the ecology report and the indicative Landscape Strategy Plan inform the future reserved matter stage and that biodiversity net gains could be secured. However, whilst the indicative Landscape Strategy Plan does show an area along the western boundary where it states the hedgerow would be maintained and enhanced, the majority of the area highlighted in this regard is outside of the appeal site boundary.
24. I note that the appellant suggests that the number of dwellings could be reduced moving forward which would provide additional space for further landscaping mitigation within the appeal site. However, the description of development is for up to 6 residential dwellings and therefore I have to consider the appeal based on the overall effect that the proposal could have.
25. I therefore find, without any substantive evidence to the contrary, that the required mitigation is unlikely to be achieved and therefore the proposal is likely to have a harmful effect on ecology and biodiversity. Insufficient information is provided to determine whether the scheme would result in a biodiversity net gain. The proposal would fail to accord with Policies SWDP 21, 22 and 25 of the SWDP. These policies seek, amongst other things, that development should enhance biodiversity and biodiversity corridors/networks beyond the site boundary wherever practicable and integrate effectively with its surroundings and landscape setting. The proposal would also be contrary to the relevant paragraphs of the Framework.

Green Space

26. The appeal site forms part of an allocated green space. Policy SWDP 38 of the SWDP relates to green space identified on the policies map. Part B of the policy states that the development of green space will not be permitted unless exceptional circumstances have been demonstrated.
27. The appellant asserts that criteria B ii. of Policy SWDP 38, which states that development of green space will not be permitted unless an assessment of community and technical need (using recognised national methodology where

appropriate) clearly demonstrates that the green space is surplus to requirements, is relevant to this case and that the proposal meets this exception.

28. Policy SWDP 38 does not refer to different open space typologies but refers to the overarching term green spaces. The allocated green spaces include a range of private and public open spaces and associated community facilities. I acknowledge that the policy justification text identifies that whilst most open spaces are publicly accessible, some are in private ownership, although they nonetheless perform valuable functions such as contributing to biodiversity, the character of the area and providing a sense of openness and space. However, under B ii. of the policy the assessment identified is limited to community and technical need.
29. With regard to an assessment of technical need, I have been referred to the Council's South Worcestershire Open Space Assessment (2019) (OSA), with the most recent version dated March 2021. The OSA sets out the open space standards for assessing existing provision and requirements for new provision. It goes on to assess the administrative area on a ward by ward basis and sets out the current provision against the required standards.
30. This assessment is broken down into different open space typologies including allotments, amenity green space, park and recreation grounds (public and private combined), play space (children), play space (youth) and natural green space. The table on page 4 of the OSA sets out the required standards for each open space typology in hectares per 1000 population.
31. Taking all six of the open space typologies set out in the table on page 4 there is an overall recommended standard of 3.8 hectares of open space per 1000 population. Taking the figures provided in table 9 on page 55 of the OSA which relate to the six open space typologies set out above, the existing provision in Warndon Parish South ward, which is where the site is located, is 8.95 hectares per 1000 population.
32. Also, the appellant has provided a Warndon Parish South Open Space Provision Map, which includes the appeal site within the Accessible Natural Greenspace designation. The figures provided in the OSA state that the standard for this typology is 1 hectare per 1000 population. Table 9 on page 55 of the OSA states that in Warndon Parish South, there is 7.39 hectares of accessible natural green space per 1000 population. The existing provision for this particular typology is therefore in excess of the standard required and would remain to be so even if the appeal site were developed.
33. I recognise that when broken down into the individual open space typologies there is an undersupply in relation to allotments, park and recreation grounds and play space (youth), however, as set out above, the existing provision overall exceeds the standards required in quantitative terms.
34. The appellant contends that the natural green space typology of open space should be included in the calculation when considering the overall amount of green space provision. I do not have any evidence before me to suggest why natural green space should not be included in the calculation for the overall amount of green space, in the same way it is included in the list of open space typologies that contribute to the open space supply identified in the OSA.

35. I recognise that where certain levels of open space are identified as exceeding minimum standards, this does not mean necessarily that there is a surplus in real terms, as the space may be over-subscribed or of other benefit to an area. This is where the community need part of the assessment is relevant. However, I noted on site that whilst the adjacent green space is publicly accessible and well used by local residents, the appeal site is not publicly accessible and therefore cannot be used for recreational purposes. No other community need has been put before me which relates to the specific circumstances of the appeal site.
36. The Council has referred me to two other appeal decisions where Policy SWDP 38 has been considered. In the Wych Elm Close appeal decision, an assessment against exception B ii. of Policy SWDP 38 was not carried out. This case is therefore not directly comparable to the case before me. I note that the Darwin Avenue appeal site is in close proximity to the appeal site. In this case there was an assessment against exception B ii., however, natural green space was not referenced. I do not have the information before me as to why this was not included. In any case, it appears that this other site was accessible to the public and was well used resulting in the community need element of the assessment being clearly demonstrated.
37. I understand that the Warndon Neighbourhood Plan Consultation Summary Booklet (NPCSB) proposes Local Green Spaces as defined under paragraphs 105 – 107 of the Framework and that the appeal site is included in the wider Tolladine (former) Golf Course/Leopard Hill area. However, the NPCSB went through a consultation stage in June 2021 but has not yet been submitted for examination and therefore remains at an early stage of the plan preparation process. I therefore attribute limited weight to it. No Local Green Spaces are designated under the adopted SWDP. The appeal site is therefore not currently allocated as part of a Local Green Space.
38. I find that it has been clearly demonstrated, based on an assessment of community and technical need that the appeal site is surplus to requirements in the specific circumstances of this case and therefore the proposal would comply with Policy SWDP 38 of the SWDP. The proposal would also comply with the relevant paragraphs of the Framework.

Other Matters

39. I note that the appeal site was previously identified as a potential allocation, adjacent to the recent development carried out, but the Council have confirmed it is no longer being taken forward in the emerging Local Plan Review due to the quantum of development already being provided on the remainder of the site. Be that as it may, I must consider the proposal based on the adopted development plan policies which do not allocate the site for housing. No policies set out in the emerging Local Plan Review are referenced in the Council's reasons for refusal nor are they provided as part of this appeal.
40. The appeal site would appear to meet the definition of a small windfall site, set out in the glossary of the Framework, as a site that is not specifically identified in the development plan. Given the limited scale of the proposal, I attribute limited weight to this benefit.

Planning Balance

41. Since the publication of the revised Framework the Council consider that they possibly now do have a sufficient supply of housing, whereas at the time of the appeal submission it was not disputed by the parties that they did not. As the figures provided are not conclusive at this time, I have adopted a precautionary approach and have considered the appeal on the basis that there is not a sufficient supply, as set out below.
42. The proposal would conflict with policies SWDP 21, 22 and 25 of the SWDP and would result in harm to the character and appearance of the area and would be likely to be harmful to ecology and biodiversity. These policies align with the requirements of paragraphs 135 and 180 of the Framework which amongst other things seek to ensure developments are sympathetic to local character and history, including the surrounding built environment and landscape setting and that they minimise impacts on and provide net gains for biodiversity. I give this conflict significant weight.
43. The provision of up to six dwellings would make a positive, albeit modest contribution to the housing undersupply position. In addition, there would also be economic benefits associated with the construction phase of the development and longer term social and economic benefits with future residents supporting existing services and facilities. Notwithstanding this, given the scale of the scheme, I give these matters limited weight.
44. The appellant asserts that there would be no adverse impact on private amenity and that appropriate drainage and sufficient parking areas would be provided. Even if I were to agree, a lack of harm in these respects is a neutral consideration.
45. In accordance with paragraph 11d ii) of the Framework, consideration must be given as to whether the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.
46. The proposal would provide additional housing along with the social and economic benefits that this would bring. This would align with paragraph 60 of the Framework with regard to the contribution to the housing supply. However, given the scale of the scheme and the minor contribution it would make, this would attract limited weight.
47. Given the long lasting effects of the proposal, I give significant weight to the harm that would occur to the character and appearance of the area and the likely harm to ecology and biodiversity.
48. In considering the above factors, the adverse impacts of allowing the appeal would significantly and demonstrably outweigh the benefits when assessing against the policies in the Framework as a whole.
49. If the Council can demonstrate a sufficient supply of housing land then paragraph 11d would not apply and the benefit of additional housing would carry less weight in favour of the proposal. As such, this matter has no determinative effect on my decision.

Conclusion

50. Section 38 (6) of the Planning and Compulsory Purchase Act 2004 states that applications for planning permission, and therefore appeals, must be determined in accordance with the development plan, unless material considerations indicate otherwise. The proposal conflicts with the development plan when considered as a whole and there are no material considerations that outweigh the identified harm. The proposal also conflicts with the approach in the Framework. The appeal is therefore dismissed.

G Dring

INSPECTOR