



Appeal Decision

Site visit made on 5 January 2024

by Lewis Condé Msc, Bsc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 February 2024

Appeal Ref: APP/J1860/W/23/3319152

Land at (OS 8163 5361) Bransford Road, Rushwick

- 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 Custom Land Limited against the decision of Malvern Hills District Council.
 - The application Ref M/2022/00175/OUT, dated 3 February 2022, was refused by notice dated 6 February 2023.
 - The development proposed is the erection of 8 dwellings together with vehicular/pedestrian access from Coronation Avenue; green infrastructure including landscaping, play area and sustainable drainage; and other related infrastructure.
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Decision

1. The appeal is allowed and outline planning permission is granted for the erection of 8 dwellings together with vehicular/pedestrian access from Coronation Avenue; green infrastructure including landscaping, play area and sustainable drainage; and other related infrastructure at land at (OS 8163 5361) Bransford Road, Rushwick in accordance with the terms of the application, Ref M/2022/00175/OUT, dated 3 February 2022, subject to the Unilateral Undertaking (dated 4 January 2024) and the conditions in the attached schedule.

Application for costs

2. An application for the award of costs against Malvern Hills District Council has been made by the appellant. This is the subject of a separate decision.

Preliminary Matters

3. The site address in the banner heading above has been taken from the Council's decision notice as both the addresses supplied on the original planning application form and appeal form appear to be incorrect.
4. The planning application was submitted in outline with all matters reserved except for access. I have therefore dealt with the appeal on this basis. Although a masterplan has been submitted demonstrating how development may be laid out within the site, the appellant has highlighted this as being illustrative only and therefore I have treated it as such.
5. A revised version of the National Planning Policy Framework (the Framework) was issued on 19 December 2023. Both main parties were offered the opportunity to comment on the implication of the changes to national policy on the appeal proposal. Where received, comments have been taken into account.

Background and Main Issue

6. The Council refused the original planning application for two reasons. The first being that the appeal site lies outside of the identified settlement boundary for Rushwick and therefore the proposal does not accord with its adopted development strategy. A key consideration in refusing the application on this basis, was that the Council felt it could demonstrate a deliverable five-year supply of housing land to meet its identified needs.
7. Since the determination of the original application, the Council has acknowledged that it cannot demonstrate a five-year housing land supply, with a relatively recent appeal decision¹ suggesting that the housing land supply is in the region of 3.7 years. In light of this, and the context of the appeal site, the Council has expressed that it wishes to withdraw its first reason for refusal.
8. The main issue is therefore whether the proposed development would make adequate provision towards community infrastructure.

Reasons

9. Policy SWDP 7 of the South Worcestershire Development Plan (adopted 2016) (the SWDP) establishes, amongst other matters, that development will be required to provide or contribute towards the provision of infrastructure needed to support it. Meanwhile, Policy SWDP 62 indicates that planning obligations through S106 agreements will be sought to provide funding to mitigate negative impacts of development.
10. Further SWDP policies also outline the nature of infrastructure that is expected to be delivered alongside new development. In this instance, relevant policies include SWDP 4 relating to transport infrastructure, SWDP 5 relating to green infrastructure, SWDP 15 relating to provision of affordable housing, and SWDP 39 relating to provision for green space and outdoor community uses in new developments.
11. More detailed guidance on the use of planning obligations to deliver infrastructure, including the expected levels of contributions are outlined within the South Worcestershire Developers Contributions Supplementary Planning Document (adopted 2018) (the SPD).
12. A signed/certified Unilateral Undertaking (UU) (dated 4 January 2024) under Section 106 of the Town and Country Planning Act 1900 (the Act) has been submitted by the appellant. This has largely incorporated comments of the Council's solicitor that were made in relation to an earlier draft version UU.
13. The UU includes several obligations to come into effect if planning permission is granted. These relate to the provision of affordable housing and open space on-site, as well as a financial contribution towards off-site affordable housing (to address the shortfall in affordable housing provision as part of a home is also required). The UU also includes a financial contribution towards off-site public open space, sports, and recreation; a financial contribution towards healthcare infrastructure; and a financial contribution towards highway works.
14. In respect of the highways contribution, this would enable the provision of off-site works at the junction of Coronation Avenue and Grange Lane. Whilst the

¹ APP/J1860/W/22/3313440 Land At (OS 8579 4905) Post Office Lane, Kempsey, Worcestershire

Council has also sought for tactile paving to be provided at other vehicle crossings along Coronation Avenue, I have not considered this necessary given the surrounding highway context.

15. I have considered the obligations in light of the statutory tests contained in Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010 (the Regulations) and against the Council's development plan policies and the SPD.
16. Each of the planning obligations are directly related to the proposed development and necessary to make the development acceptable in planning terms. The levels of affordable housing and open space provision, as well as the financial contributions outlined within the UU, are also in accordance with those sought by the SPD and relevant policies of the SWDP. Accordingly, they are also fairly and reasonably related in kind to the development.
17. The appellant has highlighted that the proposed development is to be undertaken by a small developer as opposed to a national housebuilder. As such, it is claimed that for cash flow purposes it will be necessary for some of the financial contributions to be provided prior to the occupation of the proposed dwellings, as opposed to prior to commencement of development. This would enable some receipts from the development to be accrued before incurring additional financial outlays. Although the SPD suggests that some of the contributions sought should be provided prior to the commencement of development, it remains guidance only. In this instance, given the scale and nature of the development I am satisfied that the contributions being provided prior to occupation of the proposed development would not cause any harm to community infrastructure.
18. However, the Council has also sought a proportionate contribution towards infrastructure reflecting the intentions of the Publication Version South Worcestershire Infrastructure Delivery Plan 2022 (SWIDP) (published September 2022). This has been calculated as approximately £38,000 per dwelling.
19. The purpose of the SWIDP is to establish the additional infrastructure and service needs to support the level of development proposed in the South Worcestershire Development Plan Review (SWDPR) over the period to 2041².
20. Rushwick has been identified as a strategic growth area in the emerging SWDPR, that is expected to accommodate in the region of 1,000 new dwellings as well as employment land. The South Worcestershire Councils' IDP provides a detailed breakdown of the likely infrastructure requirements associated with the expanded settlement of Rushwick, including costs where known. It also provides calculations for developer costs, and funding gaps that would need to be addressed.
21. However, both the SWDPR and SWIDP have yet to be independently examined. Until such time as the SWDPR, including the SWIDP, have been appropriately scrutinised and tested through independent examination, it carries limited weight.
22. I therefore do not find that a requirement for the appellant to also proportionately contribute towards infrastructure outlined in the SWIDP would

² In the case of the two new settlements the IDP looks beyond this period.

meet the tests of CIL Regulation 122, even if a mechanism was included as part of the planning obligation to return any sums not spent. This is because I currently cannot be sure that the SWDPR and SWIDP will be found sound, including that a strategic allocation at Rushwick will be forthcoming or the nature of associated infrastructure requirements, as well as the level of developer's contributions that will be required for their delivery.

23. Given its limited scale and that the UU would provide contributions towards infrastructure needs in line with adopted requirements, I find that the development of up to 8 dwellings would also not undermine the potential future delivery of the emerging Rushwick strategic site allocation nor its associated infrastructure requirements.
24. Overall, I therefore find the UU provides an appropriate mechanism to secure the necessary planning obligations and is in accordance with CIL Regulation 122. Based on the evidence before me, and subject to the provisions of the UU, I am therefore satisfied that the appeal scheme would make adequate provision towards community infrastructure. It therefore complies with Policies 4, 5, 7, 15, 39 and 62 of the SWDP, as well as the advice of the SPD in regard to the provision of appropriate infrastructure to support new development.
25. The Council's decision notice also refers to Policy SWDP 37 which deals with built community facilities. However, the policy seemingly relates to development involving the direct provision of new facilities, or their enhancement, or criteria for loss of such facilities. The policy does not identify requirements for other development proposals to contribute towards community facility infrastructure. As such, I do not consider it to be relevant to the appeal scheme.

Other Matters

26. The appeal site lies within the setting of Willow House, a Grade II listed building that is located near the site, on the edge of Broadmore Green; a small hamlet historically distinct from Rushwick. The Council does not object to the proposed development based on any harm to the heritage asset, nevertheless, I have a statutory duty under the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act), to have special regard to the desirability of preserving a listed building or its setting and any features of architectural or historic interest that it possesses.
27. From the information before me and my observations, the significance of Willow House primarily resides in its architectural quality, as a good example of a likely mid-19th century rural dwelling, that retains much of its original fabric. It is also likely to have some historic interest, given its age, position and the manner in which it addresses Bransford Road (a historically important route to Worcester).
28. The setting of the listed building encompasses countryside beyond the section of Bransford Road in which it sits, including the appeal site, with views to and from Willow House forming an important part of the heritage asset's setting. That being said, the setting of the heritage asset has already experienced significant change from what was once likely to be a primarily rural landscape. Indeed, the introduction of a significant number of more modern dwellings has resulted in the listed building being experienced alongside a rather urban edge, as opposed to a highly rural setting. Additionally, it seems that Willow House is

unlikely to have ever been an agricultural building nor have a functional link to the appeal site.

29. Nonetheless, the proposal would introduce further built form nearer to the listed building, albeit the access road is proposed via Coronation Avenue, whilst a field nearest the listed building would be retained as undeveloped, thereby maintaining a rural connection. Although much will depend on the precise form of development that may come forward at reserved matters stage, including the layout and landscaping arrangements, I am satisfied that in principle the development of up to eight dwellings could preserve the setting and significance of the listed building.
30. I have considered the various concerns that have been put forward by third parties and the Parish Council. Notably, the District Council no longer objects to the appeal scheme on the grounds of it being outside the defined settlement boundary for Rushwick, including the implications that this would have on the character of the countryside or the site's access to facilities and services. From the evidence before me and my observations on-site I have no reason to reach an alternative view.
31. As detailed above, I am also content that the UU provides an appropriate package of mitigation towards infrastructure requirements for the proposed development. Given the scale of the proposal, I also do not consider that it would undermine the future development strategy for the area, including the preparation of an emerging Neighbourhood Plan.
32. Several of the concerns that have been raised are issues that would need to be considered at reserved matters stage. For example, the design and appearance of the proposed development.
33. Concerns raised regarding rights to a view and the effects of the proposal on property prices are not material planning considerations.
34. I am also aware of the previous appeal decision³ for a scheme of approximately 40 dwellings that incorporated the current appeal site and adjoining land. Despite that previous scheme being dismissed at appeal, it was of a significantly different context to the proposal currently before me. Notably, due to its overall scale and nature, including its effects on the nearby designated heritage asset.
35. Whilst I note the significant level of opposition to the appeal scheme, my decision does not turn on the issues that have been raised by third parties.

Conditions

36. I have considered the conditions put forward by the Council against the requirements of the Planning Practice Guidance (PPG) and the Framework. In the interests of precision, conciseness, and enforceability I have undertaken some minor editing and re-ordering of the conditions.
37. I have imposed standard conditions relating to the submission and timing of reserved matter applications and the commencement of development. It is necessary to require compliance with the submitted plans, but only in relation to the site location plan and access arrangements.

³ APP/J1860/W/19/3242098 - Land South of Bransford Road, Rushwick

38. A condition requiring that the detailed site layout shall provide for access up to and including the boundary for future unrestricted access to/ from the adjacent sites is necessary to prevent the proposal from prejudicing the connectivity and permeability of potential future development in the area. I note the appellant's comments that such access should only be for pedestrians and cyclists, based upon the comments of the highway officer. However, such measures may result in a ransom strip prejudicing future development proposals/layouts. Additionally, detailed consideration of highway safety and transport issues arising from potential increased vehicular movements through the site could be considered as part of any relevant future application(s).
39. A pre-commencement condition requiring a programme of archaeological works, including a written scheme of investigation, to be undertaken is necessary in the interests of archaeology.
40. A pre-commencement condition requiring details of the surface water drainage system to be installed at the site is also necessary to ensure that suitable drainage is provided, including to prevent an increase in flood risk on or off site. It has not been necessary to attach a separate condition requiring details of the proposed routes and points of discharge for surface water from the site, as this information would need to be provided as part of the details of the proposed surface water drainage system.
41. A condition requiring the provision of the access and turning points prior to the occupation of the proposed dwellings is needed in the interest of highway safety and to ensure an appropriate form of development is delivered. The appellant has indicated that this should not include the final tarmac finish of the road, suggesting that this is typically put in place once dwellings are occupied. However, no robust reason has been given to support this view and I am mindful of the need to ensure that the access roads are complete in a reasonable period, so have maintained the Council's suggested wording.
42. A condition requiring the provision of low carbon/renewable energy measures as part of the development scheme is both reasonable and necessary on sustainability grounds, having regard to development plan policy.
43. Off-site highway works that are necessary and relevant to the proposed development are covered by the appellant's UU. Accordingly, a condition requiring the approval of drawings demonstrating highway improvements/offsite works at the junction of Coronation Avenue and Grange Lane (as well as further works along the north side of Coronation Avenue) and the subsequent implementation of the works is not necessary.

Conclusion

44. For the reasons given, the appeal is allowed subject to the appended conditions and the associated Unilateral Undertaking.

Lewis Condé

INSPECTOR

Schedule of Conditions

- 1) Details of the appearance, landscaping, layout, and scale (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) 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:
 - 216-UW-P-001 Location Plan; and
 - 101-21274 Access Plan
- 5) As part of the reserved matters the detailed site layout shall provide for access up to and including the boundary for future unrestricted access to/from the adjacent sites as is generally indicated in drawing 216-UW-P-002 Rev A.
- 6) The development hereby approved shall not commence until a programme of archaeological work, including a Written Scheme of Investigation, has been submitted to and approved by the Local Planning Authority in writing. The scheme shall include an assessment of significance and research questions; and:
 - a) The programme and methodology of site investigation and recording;
 - b) The programme for post investigation assessment;
 - c) Provision to be made for analysis of the site investigation and recording;
 - d) Provision to be made for publication and dissemination of the analysis and records of the site investigation;
 - e) Provision to be made for archive deposition of the analysis and records of the site investigation; and
 - f) Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the approved Written Scheme of Investigation and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.
- 7) Prior to the commencement of the development hereby approved a scheme for surface water drainage shall be submitted to and approved in writing by the Local Planning Authority. Prior to submission of the scheme

an assessment shall be carried out into the potential of disposing of surface water by means of a sustainable drainage system (SuDS), and the results of this assessment shall be submitted to and approved by the Local Planning Authority. If infiltration techniques are used then the plan shall include the details of field percolation tests. There shall be no increase in surface water run-off from the site compared to the existing pre-application greenfield run-off rate up to a 1 in 100 year storm event plus 40% allowance for climate change. The scheme shall provide an appropriate level of runoff treatment. The scheme shall be implemented in accordance with the approved details before the development is first brought into use. Where a sustainable drainage scheme is to be provided, the submitted details shall:

- i. provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - ii. include a timetable for its implementation;
 - iii. provide a management and maintenance plan for the lifetime of the development which shall include robust arrangements to secure the operation of the scheme throughout its lifetime.
- 8) No dwelling shall be occupied until the access and turning area shown on Drawing 216_UW_P002 Rev A has been provided. These areas shall thereafter be retained and kept available for their respective approved uses at all times.
- 9) Prior to the occupation of any dwelling, details of renewable and/or low carbon energy generation measures shall be submitted to and approved in writing by the Local Planning Authority. The measures shall contribute to at least 10% of the predicted energy requirements of the development. The details to be submitted shall include:
- the overall predicted energy requirements of the approved development;
 - the predicted energy generation from the proposed renewable/low carbon energy measures; and
 - an implementation timetable for the proposed measures.

The development shall be carried out in accordance with the approved details.