



Appeal Decision

Site visit made on 9 January 2024

by G Bayliss BA (Hons) MA MA MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 14 February 2024

Appeal Ref: APP/J1860/W/22/3311998

Hazor Field, Garrets Bank, Welland, Malvern, Worcestershire WR13 6NF

- 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 Mr Andrew White against the decision of Malvern Hills District Council.
 - The application Ref M/22/00185/FUL, dated 8 February 2022, was refused by notice dated 23 June 2022.
 - The development proposed is demolition of existing barn/stables. Erection of two storey house at rear of site with associated landscaping and SUDs/ecology ponds with new vehicle access to Gloucester Road (B4208) with climate change/flood prevention and biodiversity scheme for site.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Although the Council's decision notice does not refer to ecology, the Council's appeal documentation clearly refers to potential harm in relation to this matter. Furthermore, the Council consider that an updated Preliminary Ecological Appraisal (June 2022) was submitted too late to be considered as part of the determination of the application. As both parties were aware of this matter and have responded to the issues raised, including the updated Ecological Appraisal, I have taken this into account in the determination of this appeal and included this as a main issue.
3. Whilst the decision notice refers to the appeal site being within the setting of the Malvern Hills Area of Outstanding Natural Beauty (AONB), both parties confirm that the site is within the AONB. I have proceeded accordingly.

Main Issues

4. The main issues are:
 - Whether the appeal site would be a suitable location for a dwelling, having regard to the development strategy for the area and access to facilities and services;
 - The effect of the proposal on the character and appearance of the AONB;
 - The effect of the proposal on the ecology of the site and surrounding area;
 - The effect of the proposal on a non-designated heritage asset; and
 - Whether the proposal makes adequate provision for affordable housing.

Reasons

Location

5. The site is a parcel of grazing land to the north east of the settlement of Welland. It lies adjacent to the B4208 and has small, dilapidated agricultural structures in the corner alongside the road and an adjoining, gated agricultural access. Its field boundaries consist of hedgerows and trees with a small brook running along the northern and eastern (roadside) boundaries of the site. The immediate area is characterised by relatively open agricultural land with several dispersed road-side dwellings extending from Welland and continuing to the north of the appeal site.
6. The scheme seeks to demolish the agricultural structures, erect a two-storey dwelling set deep into the site, together with a new vehicular access and drive positioned over a new culvert, parking and landscaping. It is proposed that the remainder of the site would continue to be used as a paddock, providing biodiversity enhancements.
7. The Council's development strategy is set out under Policy SWDP1 of the South Worcestershire Development Plan (2016) (SWDP). This indicates that, when considering development proposals, the Local Authority will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework (the Framework). This is supplemented by Policy SWDP 2 which seeks to focus most development in urban areas where housing needs are the greatest, where services and facilities are available and most accessible, and seeks to safeguard and enhance the open countryside.
8. The proposed dwelling would be located outside of the defined settlement boundary and therefore in the open countryside. Based on the submitted evidence, the proposal has not been demonstrated to comply with any of the exceptions for the development of new dwellings in the open countryside that are outlined under Policy SWDP 2. The appeal scheme is therefore in conflict with the development strategy.
9. Given the proximity of the appeal site to Welland and the presence of nearby dwellings, the site does not appear to be isolated in the context of paragraph 84 of the Framework. It also has the potential to support nearby local services and facilities in accordance with paragraph 83. Welland is also relatively close to the M50 and other main roads, has a station and regular bus services.
10. Nevertheless, the appeal site is very clearly in a rural setting and is physically and visually divorced from the settlement with agricultural land to the rear and south. Furthermore, whilst the appeal site would be within reasonable walking distance of the centre and may be suitable for cycling, there is no streetlighting between the appeal site and the settlement, and the pedestrian footpath on the other side of the road stops before the appeal site. The B4208 is a busy road and judging by the volume of traffic that I saw during my visit, based on the access as it stands, the conditions would be likely to deter many residents from walking into the village to access facilities and services. Moreso, in periods of bad weather and darkness. The presence of the 'beware of the pedestrians sign' to me suggests that whilst people may use this road for walking it is a

potential hazard. Consequently, it is likely that there would be a reliance on private vehicles, and this would not accord with the development strategy.

11. The appellant has proposed the installation of a pedestrian gate at the most southerly part of the site to enable access to the pavement across the road. However, I have no adequate evidence before me to demonstrate that this would be a safe place to cross or whether, given its location remote from the house and accessed across the paddock, that its occupants would be likely to use it. I note that an additional footpath was proposed as part of the previous appeal decision (Ref. APP/J1860/W/18/3197012) on this site, but it appears to me that this was a different access solution to that before me.
12. The appellant has referred to several recent developments to the south of the appeal site located outside the settlement boundary. Both parties have also drawn my attention to appeals that have considered the suitability of a site for housing development having regard to its location in relation to accessibility to services. In some development it was concluded that the site was acceptable in this regard, in others not. What is clear is that this is a matter that requires the judgement of the decision maker based on the specific characteristics of the site and its location, and the nature of the route between it and various services. In these respects, the circumstances of none of the sites appear directly comparable to this appeal proposal.
13. The appellant suggests that, based on the outcome of several recent appeal decisions, the Council is unable to demonstrate a 5 year housing land supply, suggesting that the supply may be as low as just over 3 years. This position is contested by the Council. Paragraph 11 of the Framework states that in these circumstances relevant policies for the supply of housing should not be considered up to date. However, whilst they may be considered out of date, this doesn't mean that they are afforded no weight. The need to carefully manage and limit the number of new homes in locations with limited sustainability credentials remains valid in the context of the environmental objectives of national and local planning policy. As such, if I were to conclude that the Council has no 5 year housing land supply, I would still afford the harm arising from the conflict with these local plan policies significant weight.
14. The site would lie in the open countryside outside the defined settlement boundary, where the planning policies require restraint to the spread of development in rural areas. I therefore conclude that the proposal would not provide a suitable location for a dwelling having regard to the development strategy for the area and access to facilities and services. As such, the proposal would conflict with Policy SWDP 1 and Policy SWDP2 and the Framework.

Character and appearance

15. Policy SWDP 23 requires that proposals within the AONB conserve and enhance the special qualities of the landscape and have regard to the AONB Management Plan. AONBs are afforded the highest status of landscape protection and paragraph 182 of the Framework states that great weight should be given to conserving and enhancing their landscape and scenic beauty.
16. The site lies within the 'enclosed commons landscape type' in the Worcestershire County Council's Landscape Character Assessment (2012) (CA). The relevant landscape guidelines include conserving hedgerows, conserving

the spatial pattern of wayside dwellings and conserving and enhancing the spatial pattern and scale of the landscape. It also notes that the low-density wayside settlement patterns are gradually being eroded by new dwellings.

17. The appellant suggests that the land is in poor condition, having previously been used as a waste site, with a poor landscape character. However, I have no adequate reason to depart from the view of the previous Inspector who considered that the land was not dissimilar to other adjacent fields. In this regard it was considered that it contributed to the green and verdant approach to the village with the site itself being of a pleasant, green, open appearance. Further, I consider that it positively contributes to the character and appearance of the AONB and affords attractive views across it towards the Malvern Hills.
18. The Landscape and Visual Impact Assessment Report (2022) (LIVIA) concludes that the site would benefit from landscape restoration to obscure the urbanising effects of nearby recent developments to increase its contribution to the scenic beauty and special quality of the landscape. It considers that through the careful siting of the dwelling, restoring hedgerows and planting an orchard, the impacts could be substantially screened from the most sensitive views.
19. The two-storey dwelling would be set deep into the field and, alongside the access drive and hardscaping, it would represent a marked change in the character of the site. Despite the changes to the design and siting of the dwelling, and the screen planting, I am not convinced that the dwelling would be barely visible from the road. In my view it would still be clearly visible, intruding into that green, tranquil open space, removing the pastoral land use, and disrupting the long-range views across the site. Furthermore, the works to the access and partial removal and realignment of the hedgerow to achieve the visibility splays would further urbanise the character of the site. The development would be a noticeable and discordant feature from the road and surrounding countryside. It would, therefore, be of detriment to the loose spatial pattern of rural dwellings and rural texture to the area and its landscape character, contrary to the landscape guidelines.
20. The appellant indicates that the site would be used partly as a paddock, with a new orchard and other features to restore and improve the landscape character and benefit ecology. It would also remove the existing tatty agricultural buildings in the corner of the site. However, whilst these would be beneficial and to some extent would mitigate some of the effects of the development, they wouldn't mitigate the harm caused by the overall marked change in character resulting from the urbanising effects of the development. Furthermore, with no clear boundary between the dwelling and the paddock there is the potential for the whole of the site to be used as domestic garden in the future with increased associated domestic paraphernalia. The harm caused to the AONB would be significant and permanent.
21. It is suggested that the existing hedges on the appeal site are particularly fragmented such that they allow views of nearby recent developments. In this regard, I found that the existing hedgerows, even when not in leaf, appeared to substantially screen nearby developments when viewed from the road. Therefore, the proposed bolstering of the hedgerows does not assist me in justifying the development.

22. I therefore consider that the proposal would have a harmful effect on the character and appearance of the AONB. It would therefore be contrary to Policies SWNP 21, SWNP 23 and SWDP 25, as well as the guidance in the CA and Framework.

Ecology

23. Policy SWDP 22 seeks to enhance biodiversity and geodiversity conservation interests as well as conserve on-site biodiversity corridors and networks wherever practicable. Furthermore, The Natural Environment and Rural Communities Act 2006 (the Act) places a duty on all public authorities to have regard, in the exercise of their functions, to the purpose of conserving biodiversity.
24. The appellant's updated Preliminary Ecological Assessment concludes that there are no significant issues with the site as it is of limited ecological value and all matters can be mitigated as part of the proposed development including the protection of trees and hedgerows. It states that subject to precautionary measures, there should be no adverse impact on the ecology of the site and the proposal would greatly enhance the site's biodiversity and incorporate a cultural landscape habitat.
25. I share the Council's concern that the updated assessment does not appear to consider the likely impacts arising from the most recent version of the landscaping plan (GLA-730D-006 (F) which includes a large SUDs feature, minor changes to the course of Marl Brook to create new access, and the re-profiling of the bank. Also, I have found no mention of the removal and realignment of part of the hedgerow to create the visibility splay and the removal of a tree. On this latter point, the appellant's tree survey report states that the tree identified for removal is at the end of its life but has potential ecological value.
26. Therefore, insufficient information has been submitted to understand the full extent of the impact on the site's ecology or to assess mitigation. Therefore, it cannot be concluded that there would be no harm to the ecology of the site and surrounding area. It would therefore conflict with Policy SWDP 22, the Act, and the Framework which sets out that development should contribute to and enhance the natural environment.

Heritage asset

27. Paragraph 195 of the Framework states that heritage assets are an irreplaceable resource and should be conserved in a manner appropriate to their significance. Paragraph 200 of the Framework requires applicants to describe the significance of any heritage assets affected. Further, that the level of detail should be proportionate to the asset's importance and no more than is sufficient to understand the potential impact of the proposal on their significance. In relation to heritage assets with an archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation.
28. Trial trenching and excavation on an adjacent land has confirmed that the site was an Iron Age pottery production area which is likely to be adjacent to an area of occupation. The evidence before me therefore suggests that the site has archaeological potential and should be regarded as a non-designated

heritage asset under the terms of the Framework. Paragraph 209 states that the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. A balanced judgement will be required having regard to the scale of any harm or the loss and the significance of the heritage asset.

29. The appellant suggests that an archaeological assessment of the site was not requested by the Council during the validation process, and they would have been willing to undertake the necessary investigations. Although the appellant has now indicated that they have received advice from an archaeologist suggesting that a survey would be inconclusive due to previous landfill on the site, I have no adequate details before me. These details would be required prior to determination to understand significance and likely impact, and could not be secured by condition.
30. I therefore cannot conclude that the proposal would not have a harmful effect on a non-designated heritage asset and there would be conflict with Policy SWDP 6 and SWDP 24 which seek to conserve and enhance heritage assets, including assets of potential archaeological interest, and the Framework.

Affordable housing

31. The Council's Formal Position Statement (June 2019) clarifies the requirement for affordable housing as set out in Policy SWDP 15. The building falls within a Designated Rural Area, therefore the policy requires that on sites of less than 5 dwellings a financial contribution towards local affordable housing should be made based on the cost of providing the equivalent in value to 20% of the units as affordable housing on the site. In this regard I have no evidence before me to suggest that the Council's position regarding affordable housing is not in accordance with the Framework.
32. Although the appellant suggests that this matter has not been raised previously, it is mentioned in the officer's delegated report and there is clear policy support for the approach taken. Whilst the appellant has indicated that they would be prepared to enter into a Section 106 Agreement to pay the Council the requisite sum, I have no completed legal agreement before me. Therefore, the proposal fails to support any affordable housing provision, contrary to Policy SWDP 15 and paragraph 64 of the Framework.

Conclusion and planning balance

33. If I were to conclude that the Council has no 5 year housing land supply, paragraph 11d) of the Framework indicates that permission should be granted unless: 11d)i. the application of policies in the Framework that protect areas or assets of importance provides a clear reason for the development proposed or 11d)ii. the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole.
34. Footnote 7 of the Framework identifies AONBs as one of the areas that paragraph 11d)i. relates to. In line with the Framework, I give great weight to the harm the proposal would cause to the AONB. Therefore, even if the housing land supply figure is as low as the appellant suggests, the policies in the Framework that protect areas of particular importance provide clear reasoning

for refusing the development proposed, and so the presumption in favour of the development does not apply.

35. Furthermore, I have also found that the appeal proposal would conflict with the Council's development strategy and provide limited accessibility to shops and services. I have also concluded that the scheme has the potential to harm a non-designated heritage asset and a site of ecological interest. It would also not make adequate provision for affordable housing.
36. The provision of one dwelling would assist housing supply and there would be benefits to the local economy both through the construction of the dwelling and the spend of the future occupiers. However, those benefits would be very limited given the scale of the development. Other benefits would include the provision of a self-build dwelling for a local family which would release their existing home which is no longer suitable for them. However, the SWDP does not treat self-build housing as an exception for the purposes of controlling development in the countryside and, in any event, I have no legal agreement to secure this or certainty that it would comply with the legal definitions of self-build housing. The proposal may also improve localised flooding, remove a group of tatty agricultural structures and improve features of landscape character and have biodiversity gains. However, these matters taken in the round do not outweigh the harm that I have identified nor provide justification for development that conflicts with the development plan.
37. Planning law requires that applications for planning permission should be determined in accordance with the development plan unless material considerations indicate otherwise. In this case I have found that the proposal conflicts with the development plan as a whole. Even if I were to conclude that the Council had a lack of a 5 year housing land supply, the presumption in favour of development does not apply, and so there are no material considerations, including the Framework, that justify a determination other than in accordance with the development plan.
38. For the reasons set out above I therefore conclude that the appeal is dismissed.

G Bayliss

INSPECTOR