



Appeal Decision

Site visit made on 16 July 2024

by Tamsin Law BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 August 2024

Appeal Ref: APP/J1860/W/24/3338781

Land at (Os 7904 6930), Dunley, DY13 0UE

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr D Devey against the decision of Malvern Hills District Council.
 - The application Ref is M/23/00884/OUT.
 - The development proposed is described as "outline application for the proposed erection of 3 no. self-build dwellings with vehicular access. All other matters reserved."
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Decision

1. The appeal is allowed and planning permission is granted for the proposed erection of 3 no. self-build dwellings with vehicular access. at Land at (Os 7904 6930), Dunley, DY13 0UE in accordance with the terms of the application, Ref M/23/00884/OUT, subject to the conditions in the attached schedule.

Preliminary Matters

2. Since the Council issues their decision a tree adjoining the appeal site has been protected by a Tree Preservation Order (TPO). I have taken this into consideration in my decision.
3. The appeal proposal was submitted in outline with the means of access being considered at the outline stage. Notwithstanding that, an indicative block plan together has also been provided. However, with the exception of the site access, the details shown on the additional particulars are not being considered at the outline stage. I have therefore treated these drawings as being indicative to show a possible way of developing the site.

Main Issues

4. The main issues are whether the proposed development would be consistent with local and national policies relating to the location of new housing development; the effect of the proposed development on trees; and whether the proposed development makes adequate developer contributions.

Reasons

Location

5. Both main parties acknowledge that the appeal site is located outside any settlement boundary as defined by the South Worcestershire Development Plan (2016) (SWDP) and is therefore considered to be in the open countryside. Policy SWDP2 of the SWDP states that in these locations residential development will be limited to rural workers dwellings and replacement dwellings. The construction of self-build dwellings is not listed as an exception;

therefore, the proposed development would conflict with the location strategy of the development plan.

6. Local services such as a public house, petrol station and small convenience shop are located within walking distance of the appeal site. Dunley Hall, a residential care home, and a car sales business are located in walking distance of the appeal site. Whilst these would offer some opportunity for services and employment in the locality, occupants of the appeal scheme would be likely to need to travel to other settlements for wider facilities to meet their day-to-day needs.
7. Redhouse Lane connects the appeal site with Astley Cross, a larger settlement located to the east of the site. This is where the nearest bus stop is located, some 1km walk away. Redhouse Lane is a narrow unlit road with no continuous pavements connecting the appeal site with Astley Cross and the bus stop. Although the desirability of the route would be less favourable outside of daylight hours, it would offer the potential for future occupants to make some use of public transport. Nevertheless, given these constraints, an increase in travel by private car remains a likely consequence of the appeal scheme.
8. Due to its location outside the settlement boundary and constraints to accessibility, it would be contrary to the strategy of the development plan. It would conflict with SWDP Policy SWDP2 which seeks, amongst other things, to focus development on urban areas where housing needs and accessibility to public services are greatest.

Trees including TPO

9. A number of mature trees lie along the eastern boundary of the site which adjoins the garden of a neighbouring property. An oak tree is covered by a TPO. The Council have raised concerns with regard the lack of information relating to the protection of the OAK tree, which would be located adjoining the garden areas of the proposed development. Whilst no tree survey has been undertaken, the Council's Landscape Officer has noted that the root area of the tree would likely extend some 4.6 metres in to the appeal site.
10. An indicative layout plan has been submitted which details the proposed dwellings being on large plots, with the closest proposed dwelling being located approximately 9.5 metres from the boundary with the adjoining garden. As layout is a reserved matter the plan is only indicative it does demonstrate that the proposed development could be constructed outside any potential root protection area.
11. Whilst detailed information relating to root protection areas has not been submitted with the appeal, the submission of these details along with any protection measures can be secured by condition.
12. The appeal scheme would therefore accord with SWDP Policies SWDP 21 and SWDP 22 which seek, amongst other things, to ensure that where proposals will not result in the loss or deterioration of trees. The proposal also complies with paragraph 136 of the National Planning Policy Framework (the Framework) which seeks to ensure that existing trees are retained.

Planning Obligations

13. A Section 106 Agreement has been completed which includes an affordable housing contribution to be paid. The inclusion of a financial contribution for this purpose within the S106 Agreement would satisfy the need to make such a contribution towards the provision of the affordable housing. It appears to be necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related to it in scale. The Council have confirmed the S106 Agreement is acceptable and would address the reason for refusal.

Other Matters

14. The proposed development would provide three dwellings located on a private road that provide access to a nearby care home. Whilst the access road is a single lane, it is fairly straight with good visibility. As such any future users would have good visibility of any oncoming traffic, pedestrians, or cyclists. The private road adjoins Redhouse Lane and Worcestershire County Council's Highways department have advised that the junction and driveway are suitable for the proposed development. Having regards to what I saw on site and the comments made by the Highways department the proposed development would not have a harmful impact on highway safety.
15. The appeal site is located in Flood Zone 1 and the submission details the use of sustainable drainage and permeable paving. Further details will be submitted at reserved matters stage. I am satisfied that drainage from the site can be appropriately managed.
16. The proposed building would be located close to three Grade II listed buildings, Dunley Hall, Barn South of Dunley Hall and The Red House. Dunley Hall and Barn derive their significance from their historic detailing, network of outbuildings and contained garden areas which provide a historic link to its former status as a large dwelling. The Red House derives its significance from its special architectural interest as a well-preserved late 17th century house. The listed buildings are separated from the appeal site by mature landscaping, dwellings, and outbuildings. The appeal site is separated from the listed buildings and does not form part of the setting of these buildings. The proposed development would therefore have a neutral effect on, and therefore preserve, the setting of the listed buildings.

Planning Balance

17. Framework paragraph 11 d) ii. states that where relevant policies are out of date, 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. The Framework sets out that the purpose of the planning system is to contribute to the achievement of sustainable development through the delivery of the mutually dependent economic, social, and environmental objectives.
18. There would be a small socio-economic benefit from the proposal related to the construction and occupation of this development. I afford this modest weight. The proposal's contribution to the Council's overall supply of housing attracts modest weight. Paragraph 70 of the Framework recognises that small sites can

make an important contribution to meeting the housing requirement of an area and are often built out relatively quickly.

19. Under Section 2A of the Self-build and Custom Housebuilding Act 2015 (as amended) the Council is required to grant sufficient planning permissions to meet the demand for self-build and custom housebuilding in the authority's area in each base period. The Council's submission details that 20 self-build plots have been granted consent out of a total requirement of 57 plots by October 2023. This represents a significant shortfall of 37 plots. The proposal would deliver 3 self-build plots and aid the Council in meeting this target. This is a clear public benefit that carries significant weight.
20. In the context of the development plan, I have found that the location of the proposed development would be contrary to the development strategy. It would also have limited access to services and facilities. It is therefore contrary to SWDP Policy SWDP2 and to the development plan as a whole. For this appeal, I have found policies SWDP2 to be generally consistent with the relevant aims of the Framework.
21. Whilst the conflict with these policies amounts to harm, the Council is currently failing to deliver sufficient homes to meet the five-year housing land supply and is not meeting its self-built plot requirements. Therefore, in the context of the appeal, this reduces the weight to be afforded to this policy conflict.
22. I have found that the proposal would not harm protected trees. This is a neutral consideration.
23. Therefore, the adverse impacts of the proposed development in respect of the location of the site and its accessibility would not significantly and demonstrably outweigh the combination of its benefits, when assessed against the policies in the Framework as a whole. Despite the conflict with the development plan, material considerations indicate permission should be granted for the proposed development.

Conditions

24. Conditions controlling the time for submission of reserved matters, implementation of the permission and listing the approved plans are required in the interests of certainty.
25. To protect biodiversity and environmental interests, a condition is required to secure a construction environmental management plan. In the interests of highway safety, alternative methods of transport, and reducing travel demand as far as possible, conditions relating to parking layout and cycle parking are necessary. Conditions regarding an archaeology written scheme of investigation and completion of a post investigation assessment are necessary in order to safeguard the historic built environment.
26. I have attached a condition relating to tree protection due to the proximity of the protected oak. Whilst one has not been suggested by the Council, the appellants submission confirms that they would consider such a condition acceptable.
27. Some of the Council's conditions included reasons for their imposition and lists of details to be submitted. My conditions focus on the actions required to be taken in the interests of precision, and I have omitted generic lists so that the

parties can agree the relevant factors for this site, in accordance with prevailing guidelines at the relevant time. I have made some other changes to the Council's suggested conditions to avoid duplication and in the interests of consistency and clarity, and to ensure compliance with the Framework and Planning Practice Guidance.

Conclusion

28. For the above reasons, and having had regard to all other matters raised, the appeal should be allowed.

Tamsin Law

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) The development hereby permitted shall be carried out in accordance with the following approved plan: OS Plan@ Scale 1:1250
- 5) The development hereby permitted shall not be brought into use until the access, parking and turning facilities as shown on drawing 2316 - 01 - P - General Proposal have been constructed in full.
- 6) The development hereby permitted shall not commence until a Construction Environmental Management Plan has been submitted to and approved in writing by the Local Planning Authority.
- 7) The development hereby permitted shall not be brought into use until sheltered and secure cycle parking has been provided in accordance with details which shall first be submitted to and approved in writing by the Local Planning Authority and thereafter the approved cycle parking shall be kept available for the parking of bicycles only.
- 8) No development shall take place 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:
 - i. The programme and methodology of site investigation and recording.
 - ii. The programme for post investigation assessment.
 - iii. Provision to be made for analysis of the site investigation and recording.
 - iv. Provision to be made for publication and dissemination of the analysis and records of the site investigation.
 - v. Provision to be made for archive deposition of the analysis and records of the site investigation.
 - vi. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.
- 9) 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 Written Scheme of Investigation approved under condition 8 and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

- 10) The details submitted in accordance with condition 1 above shall include:
- i. a plan showing the position of every tree on the site and on land adjacent to the site that could influence or be affected by the development, indicating which trees are to be removed; a schedule in relation to every tree identified listing:
 - ii. information as specified in paragraph 4.4.2.5 of British Standard BS 5837: Trees in relation to design, demolition, and construction - Recommendations) (or in an equivalent British Standard if replaced); and, any proposed pruning, felling or other work;
 - iii. in relation to every existing tree identified to be retained on the plan referred to in i) above, details of:
 - a. any proposed alterations to existing ground levels, and of the position of any proposed excavation, which might affect the root protection area;
 - b. all appropriate tree protection measures required before and during the course of development (in accordance with paragraph 5.5 of British Standard BS 5837) (or in an equivalent British Standard if replaced); and
 - c. areas of existing landscaping to be protected from construction operations and the method of protection.