

Appeal Decision

Site visit made on 20 August 2024

by K Townend BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 September 2024

Appeal Ref: APP/H1840/W/24/3339724

Land to the rear of Kenosha, Foredraught Lane, Tibberton WR9 7NQ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant permission in principle.
 - The appeal is made by Adrian Aranda on behalf of Greenly Developments against the decision of Wychavon District Council.
 - The application Ref is W/23/02074/PIP.
 - The development proposed is Permission in Principle for up to 8 self/custom build dwellings (including demolition of existing dwelling).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The proposal is for permission in principle. Planning Practice Guidance (PPG) advises that this is an alternative way of obtaining planning permission for housing-led development. The permission in principle consent route has two stages: the first stage (or permission in principle stage) establishes whether a site is suitable in-principle, and the second ('technical details consent') stage is when the detailed development proposals are assessed. This appeal relates to the first of these two stages.
3. The scope of the considerations for permission in principle is limited to location, land use and the amount of development permitted¹. All other matters are considered as part of a subsequent technical details consent application if permission in principle is granted. I have determined the appeal accordingly.
4. An applicant can apply for permission in principle for a range of dwellings by expressing a minimum and maximum net number of dwellings as part of the application. In this instance, permission in principle has been sought for up to eight self/custom build dwellings.
5. The appellant has submitted a Character Assessment Report² with the appeal submission and a Self-build and Custom Housing Building Demand and Supply Report³ (the Custom Build Homes Report) within their final comments

¹ Planning Practice Guidance (PPG) Paragraph: 012 Reference ID: 58-012-20180615; Revision date: 15 06 2018

² PlanningDesign Character Assessment Report dated February 2024

³ Custom Build Homes report dated 18 June 2024

to supplement the information submitted at the application stage. The Council has considered the Character Assessment Report before submitting their statement of case.

6. Although the Custom Build Homes Report adds new information neither of these new documents fundamentally alter the scheme in terms of the matters to be considered at this Permission in Principle stage. The Council has had sight of both documents and I have given the Council the opportunity to comment on the Custom Build Homes Report. Furthermore, given the matters to be considered at this stage, neighbouring occupiers would not be prejudiced in my accepting the information.
7. Both main parties have referred to the South Worcestershire Development Plan Review (SWDPR). The Council has advised that the plan was submitted to the Planning Inspectorate for examination on 27 September 2023 and therefore the SWDPR, and the policies therein, is a material consideration in the determination of planning applications. However, I cannot be certain if any policies are to be modified or when it is likely to be adopted. I, therefore, only give limited weight to the emerging policies.

Main Issue

8. 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, with particular regard to the development strategy for the area, the character of the area, and access to services and facilities.

Reasons

Development strategy

9. The appeal site is made up of three sections, the existing detached house, Kenosha, its immediate gardens to the front and rear, and a field to the rear of the garden, which is wider than the garden and extends behind three of the properties either side of Kenosha. The existing house, along with the houses either side, front Foredraught Lane. The land to the rear slopes upwards away from the roadside houses, beyond which is agricultural land.
10. A decision on whether to grant permission in principle must be made in accordance with the relevant policies in the development plan. All of the site, apart from the existing dwelling and its immediate garden, lies outside the settlement boundary for Tibberton as identified in the South Worcestershire Development Plan, adopted 2016, (the SWDP) and is, for planning purposes, considered to be within open countryside. Policy SWDP 2 of the SWDP seeks to safeguard the open countryside and part C of the policy seeks to strictly control new development. The proposal would not fall within any of the limited forms of development set out as exceptions to Policy SWDP 2. The location and land use of the proposal would, therefore, be contrary to the development strategy for the area.
11. I have not been made aware of any policies within the SWDPR that would support the proposed development and, based on the evidence before me, the site would continue to be outside the settlement boundary. Consequently, it would also fail to comply with the SWDPR.

12. The proposal would also be contrary to the National Planning Policy Framework (the Framework) which promotes a plan-led system to identify areas suitable for development.

Character of area

13. The existing housing along Foredraught Lane is road fronting, set back along a fairly well-defined building line with varying length gardens behind. The rear part of the site is enclosed by hedges and has gardens, paddocks and fields surrounding it. Although there is housing on the Hawthorn Rise estate this only encloses one side of the site. The other gardens to the side of the appeal site are green and landscaped areas which, therefore, do not urbanise the area or visually contain the site. The appeal site and the long gardens relate more to the open countryside than to the built development of the village.
14. The housing on Hawthorn Rise is only partially visible from within the site due to the presence of substantial boundary hedges and I did not observe any views of Hawthorn Rise from Foredraught Lane. Consequently, although the appeal proposal would not be intrusive in the wider landscape, it would also not be read as part of Hawthorn Rise.
15. Whilst I note the Inspector in the 2012 appeal⁴ commented that the site was well contained by housing on three sides, this is not the view I shared following my visit. I noted the housing either side of Kenosha and the Hawthorn Rise estate, however two sides of the site were not contained by housing. In that regard, I concur with the Inspector's comments in the more recent 2015 appeal⁵ in that the site is only partially contained. Taken as a whole site it is not surrounded by existing residential development, and it forms part of the open countryside beyond the settlement rather than part of the village.
16. The demolition of Kenosha would open up a gap in the otherwise built-up frontage and this would also likely result in views of the appeal proposal from Foredraught Lane. Moreover, the appeal proposal would be highly visible from the properties either side of Kenosha which currently have views over the site. The appeal proposal would constitute development at depth and would not be in keeping with the existing dwellings along Foredraught Lane.
17. Within the submitted Character Assessment Report⁶, the appellant is seeking to show that Tibberton is no longer a linear settlement, and that back land development is now part of the character of the village. Although Hawthorn Rise is a substantial housing development, which was built behind existing housing, this was a plan-led scheme and forms the central area of the village. Moreover, Hawthorn Rise is a housing estate built off the main road through the village rather than off a secondary and lower hierarchy road. For these reasons Hawthorn Rise is materially different to the appeal site.
18. The other back land developments referred to by the appellant are mostly older properties, some of which are off other secondary roads and lanes.

⁴ APP/H1840/A/12/2183239

⁵ APP/G1840/W/15/3007981

⁶ PlanningDesign Character Assessment Report dated February 2024

There are a couple of other houses built further along Foredraught Lane which sit behind the road fronting houses. However, none of the other developments, with the exception of Hawthorn Rise, are to the same depth or extent as the appeal before me. Moreover, I have not been provided with any evidence of developments that are served off a single road of the length and form that would result from the appeal proposal.

19. The two sites referred to by the appellant, which were assessed within the SHELAA as part of the forthcoming SWDPR, are not allocated sites within the current local plan and I cannot be certain that these sites will be allocated in the size and form shown within the appellant's evidence. Moreover, I note that both of the sites would be accessed off the main road through Tibberton, rather than off one of the secondary roads such as Foredraught Lane. Consequently, even if other sites in the village may be appropriate in regard to the character of the settlement this would not justify the appeal scheme.
20. Although the layout of the proposed development is a matter for the Technical Details Stage, the shape and position of the site, would result in development that would need to be sited in-line with the hedge along the boundary of the site, as shown on the indicative plan, or in a cul-de-sac form around a new access road. Any development of the appeal site would be read as an out of context back land development off Foredraught Lane. Consequently, the appeal proposal would fail to integrate with the character and settlement pattern of the immediate area or Tibberton as a whole and would not integrate effectively with its surroundings or reflect the characteristics of Foredraught Lane. It would, therefore, not respond to surrounding buildings, as required by Policy SWDP 21 of the SWDP.
21. Furthermore, the development would be on what is currently an open field which along with the other fields around the site contribute positively to the character and appearance of the countryside around the village. The proposed development would have an urbanising effect and extend built development into the open countryside beyond the existing built area. This would erode the contribution that the site makes to the character of the area and would harm the character and appearance of the countryside. The appeal before me is, therefore, materially different to the Fladbury appeal⁷ where the Inspector found that a scheme could be designed that would not harm the character and appearance of the area.
22. For the above reasons, the proposed land use, and the amount of development, in principle, would be unacceptable. The development would be contrary to Policies SWDP 2, SWDP 21 and SWDP 25 of the SWDP which, taken together, seek to safeguard and enhance the open countryside and strictly control development, ensure that development integrates with its surroundings, complements the character of the area, and enhances the overall quality of the built environment.
23. The proposal would also be contrary to Chapter 15 of the Framework which requires development to contribute to and enhance the natural and local environment and recognises the intrinsic character and beauty of the countryside.

⁷ APP/H1840/W/23/3315676

Location of development

24. Tibberton is defined in Annex D of the SWDP as a Category 3 village. These are settlements which have at least one key service and access to at least a daily bus service to a designated town. I noted two public houses and a school at the time of my visit. A new village hall has also been built as part of the most recent extension to the Hawthorn Rise estate. The services and facilities within Tibberton are, in the most, situated along Plough Road and are within comfortable walking distance of the appeal site. Moreover, the site is closer to the village facilities than a number of existing dwellings further along Foredraught Lane.
25. I acknowledge that the lane is narrow, unlit, and does not have a continuous footpath from the appeal site to Plough Road. It is, nevertheless, surfaced and was not in a poor condition. From outside the appeal site, heading towards the village, I noted two sections where the road narrows and the presence of existing roadside hedges restricts opportunities for pedestrians to step off the road. However, these are short sections, and I was able to see if a vehicle was coming towards me before walking along them.
26. I, therefore, foresee no problem with Foredraught Lane being used as a shared surface by pedestrians, cyclists, vehicles, and other road users, even in the winter months and hours of darkness. I also noted that the canal towpath is accessible from near the site and leads to Plough Road. This would provide alternative access to the village on foot during the day, even if it is not suitable as a regular alternative for access to larger settlements.
27. Future occupants of the development would need to leave Tibberton to access higher order services and facilities such as secondary education, health and medical facilities, and some places of employment or for certain leisure activities. However, the Framework recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas.
28. Two unmarked bus stops, located next to and opposite Speed the Plough public house, offer a connection to and from Worcester. Whilst I am aware the frequency of the service is limited, and interested parties have suggested that there are only two buses a day, the village is served by a bus service which connects to one of the larger settlements in the local area.
29. Bus travel would not be convenient for everyone's lifestyle or work/shift patterns. Nonetheless, the existing service would give future residents the choice to use public transport to access certain higher order facilities in Worcester or other places on the service route at reasonable times for an average work/school week.
30. The bus service, coupled with the range of day-to-day facilities available in the village within walking and cycling distance, would give future residents a genuine choice of sustainable modes of transport, which would, in turn, help to reduce reliance on the private car.
31. My attention has been drawn to an appeal decision at Evelench Lane⁸ where the Inspector found that the future residents would be dependent on their

⁸ Appeal reference APP/H1840/W/23/3320041

own vehicles to access everyday facilities and services. However, that appeal was for a much larger development of up to 100 dwellings, which the Inspector noted would result in a substantial uplift in the number of homes and people in Tibberton. The size of the Evelench Lane scheme is sufficient to lead me to a different conclusion on this main issue.

32. For the above reasons, I find that the location of the development, with particular regard to access to services and facilities, would be acceptable and is a location that would have access by a choice of modes of travel. This would promote sustainable patterns of development in accordance with the Council's overall development strategy and the Framework. I, therefore, find no conflict with Policies SWDP 1 or SWDP 4 in regard to this matter. Collectively, these policies, amongst other matters, seek to minimise the demand for travel, offer genuinely sustainable travel choices, and seek to maximise opportunities for pedestrian and cycle linkages to the surrounding area.
33. The development would also comply with the advice set out in paragraphs 109 and 114 of the Framework which seek to focus growth on locations which are, or can be made, sustainable, limit the need to travel, and offer a genuine choice of transport modes, whilst recognising that this will vary between urban and rural areas.

Other considerations

34. The proposal would provide up to eight additional self-build plots. The Housing and Planning Act 2016 sets out that local planning authorities have a duty to grant planning permission in respect of enough serviced plots of land to meet the demand for self-build and custom housebuilding in the authority's area arising in each base period.
35. The appellant, within Final Comments, has provided a detailed rebuttal of the Council's self/custom build housing figures within the Custom Build Homes Report. This document seeks to argue that there is a substantial unmet demand for this type of housing in the district. The Council has challenged the submitted report and referred to the emerging SWDPR and seeks to argue that they continue to meet the need, identified appropriately through Part 1 of the register.
36. The Custom Build Homes Report seeks to rely on secondary sources of data, from the author of the report, to provide a substantially higher demand figure of 440 individuals wanting self/custom build plots and suggests that the number of people wanting to build their own home may be as high as 2,000. However, there is limited detail behind these figures and neither party has had an opportunity to scrutinise the data to any level of detail.
37. The data provided by the Custom Build Homes Report is a high level demand assessment and is more likely to reflect a level of aspiration rather than genuine need. It is noted that the secondary data does not include the eligibility conditions or fee that are part of the local authority register, as set out in the PPG. Moreover, I do not have compelling evidence that the figure of 440 individuals does not include households registering an interest in more than one district.

38. The appeal before me is materially different to the Great Witley appeal⁹ quoted as, in that case, the Council accepted that there was a significant undersupply in self/custom build housing. Although both the appeal before me and the Great Witley appeal are within South Worcestershire they are in different districts and the figures on self/custom build housing are provided at district level.
39. The Custom Build Homes Report also refers to other appeal decisions. However, I do not have the full details of those cases to show whether they all relate to self/custom build housing. Moreover, many of the appeals referred to confirm an undersupply in the local authority area and some appear to be for substantially larger schemes or include other benefits. For these reasons, the appeals quoted are, therefore, materially different to the appeal before me.
40. Although the PPG advises that local authorities should use the demand data from the registers in their area, supported as necessary by additional data from secondary sources, it does not advise that local authorities need to consider secondary sources. Furthermore, although a local authority register cannot predict longer-term demand the requirements of the legislation are for the authority to grant enough permissions for each base period, not for a theoretical future demand.
41. The Custom Build Homes Report also seeks to discount six plots from the Councils' published supply figure, as shown in table 3 of their report. Based on the additional evidence from the Council, even if I were to accept that the last permission listed, 20/00663/FUL, should be discounted for the reasons set out in the appellant's evidence, the other permissions have been counted correctly in the Council's data.
42. Consequently, based on the latest evidence and even if I remove the one permission noted above, the Council's cumulative supply would be 82 units against a demand requirement of 83 for up to the end of October 2024. The Council did not meet its requirement in base period one or three. However, it has since met the cumulative demand, including for most of the sixth base period which has not yet ended. The number of permissions given for self/custom builds is, therefore, currently only marginally below the level of demand. However, the provision is not a maximum and I accept that the demand figure will increase over future base periods. Moreover, there is little evidence that the permissions would all be built out. The provision of up to eight additional units of this type would accord with Paragraph 63 of the Framework through providing housing for different groups in the community, including those wishing to commission or build their own homes.

Other Matters

43. The appeal site is located near the Worcester and Birmingham Canal Conservation Area (the CA). The CA runs along the canal and its setting includes the towpath and banks of the canal. The housing along Foredraught Lane contributes positively to the setting of the CA as a whole and thereby to its significance as a designated heritage asset. Bearing in mind the extent, nature and location of the proposed development, the character and

⁹ APP/J1860/W/23/3330800

appearance of the CA as a whole would be preserved and its significance would be unharmed. I note that the Council raised no objection in this regard either. Nevertheless, this lack of harm weighs neutrally and does not amount to a consideration in support of the appeal or alter my overall conclusions on the main issues.

44. The Parish Council and other interested parties have also raised concerns about highway safety of the proposed access point, the provision of visibility splays, increases in vehicle movements, effect on ecology, drainage, flooding, and the effect of the development on the living conditions of neighbouring properties. However, these matters are all issues which would be considered as part of the second stage of the Permission in Principle process. The details of the layout of the access and housing and the means of drainage of the development are not before me for consideration.
45. The ownership of any of the boundaries, including the hedges around the site, and whether these can be altered are private matters between the parties and would not alter my view on the main issues above.
46. The Technical Details Consent stage would also be subject to any legal agreement necessary to secure the required financial contribution towards affordable housing.

Planning Balance

47. Both main parties agree that the Council cannot currently demonstrate a five-year housing land supply. As the Council's emerging Local Plan is now at Regulation 19 Stage, the latest revisions to the Framework require a four-year housing land supply. However, given the substantial shortfall, of 2.65 years, I find that the Council would not be able to demonstrate a four-year housing land supply. Paragraph 11d) of the Framework therefore applies.
48. Furthermore, there is no reference to self/custom build housing within the SWDP. Having regard to the importance attached to the provision of this form of development in the Framework and due to there being no relevant development plan policies paragraph 11d) also applies. From the evidence before me this will be addressed in the SWDPR, but this has not yet been adopted and, therefore, carries little weight.
49. Policies SWDP 1, SWDP 2, SWDP 4, SWDP 21 and SWDP 25 of the SWDP are the most relevant in considering the proposal. Paragraph 225 of the Framework confirms that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework. Furthermore, policies are not automatically out-of-date due to their age.
50. As far as the policies seek to limit development in the countryside to that which protects its character, they are broadly in accordance with the Framework which seeks to ensure that development contributes to and enhances the natural and local environment, by recognising the intrinsic character and beauty of the countryside. Policy SWDP 2 does not seek to prevent all development outside of settlements. Moreover, the adopted policies are broadly consistent with the Framework as a whole.

51. I have given the conflict with the local policies, in regard to the effect on the character and appearance of the area, significant weight in this appeal. Consequently, the proposed development would conflict with the development plan as a whole.
52. The proposal would accord with paragraphs 60, 70 and 83 of the Framework which seek to boost the supply of housing, recognises the important contribution small and medium sized sites make to meeting the housing requirement of an area, seek to make effective use of land, and support the rural economy. The site would also be deliverable within a short timeframe and provides self/custom build housing in accordance with the Framework. Moreover, the proposal would also provide economic benefits both during and post construction and is in a location that is accessible to services and facilities.
53. However, although I afford significant weight to the provision of these new houses, as only eight dwellings are proposed this benefit is limited when weighing the merits of the scheme. I therefore afford significant weight to the limited benefit the development would make to addressing the housing shortfall and moderate weight to the provision of self/custom build housing.
54. The proposal would also provide biodiversity and ecology improvements to which I give limited weight in favour of the development.
55. On the other side of the balance, the proposal would result in environmental harm from the effect of the development on the character and appearance of the area and would not protect and enhance the surrounding built environment, contrary to the appellant's assertion. The harm that I have found to the character and appearance of the area is significant and I afford it significant weight. This harm, in my judgement, would significantly and demonstrably outweigh the benefits that would arise from the development. As a result, the presumption in favour does not apply.
56. I acknowledge that this is different to the conclusion reached by the Inspector in the 2012 appeal and also in the Fladbury appeal. However, in both of those cases the Inspector found no harm to the character and appearance of the area and, therefore, the weight given to the benefits was not outweighed by the harm.

Conclusion

57. For the reasons given above, the appeal should be dismissed.

K Townend

INSPECTOR