

Appeal Decision

Site visit made on 14 August 2024

by E Pickernell BSc MSC MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 October 2024

Appeal Ref: APP/H1840/W/23/3334196

Land North of Allens Hill, Pinvin WR10 2ER

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a failure to give notice within the prescribed period of a decision on an application for outline planning permission
 - The appeal is made by Lone Star Land Ltd against Wychavon District Council.
 - The application Ref is W/23/01316/OUT.
 - The development proposed is application for outline planning permission with all matters reserved, except for access, for up to 44no. dwellings, including 18no. affordable dwellings.
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Decision

1. The appeal is allowed, and planning permission is granted for application for outline planning permission with all matters reserved, except for access, for up to 44no. dwellings, including 18no. affordable dwellings at Land North of Allens Hill, Pinvin WR10 2ER in accordance with the terms of the application, Ref W/23/01316/OUT, subject to the conditions in the attached schedule.

Preliminary Matters

2. The appeal scheme relates to an outline proposal, with access to be considered at this stage and matters relating to appearance, landscaping, layout and scale are reserved for future consideration. I have considered the appeal accordingly.
3. Amended drawings were submitted to the Council during the application stage. The Council made their assessment based on these revised plans and it is these that will inform my assessment, albeit they are illustrative in respect of all matters other than access.
4. A signed planning obligation under Section 106 of the Town and Country Planning Act 1990 (as amended) was submitted as part of the appeal. This has obligations relating to the provision of affordable housing, financial contributions to the Council in respect of off-site built sports, off-site formal sport, and primary care contributions and to the County Council in respect of community transport and early years education contributions. It also includes obligations in respect of on-site public open space. I return to this matter later in my decision.

Background and Reasons

5. The appeal relates to a planning application that was not determined by the Council within the prescribed period. The Council have submitted an appeal statement which confirms that, had it been in a position to do so, it would have approved the planning application subject to conditions. As such, the Council and the appellant share the view that the appeal scheme is acceptable.
6. In light of all that I have seen and read, I concur with the appellant and the Council that whilst the proposal would conflict with the spatial strategy for the area and would result in a degree of harm to the character and appearance of the area, these harms would not significantly and demonstrably outweigh the benefits of the scheme which include the provision of market and affordable housing in a location with good access to services and facilities. I have no reason to dispute the conclusions they have reached.

Other Matters

7. Notwithstanding the position of the Council in respect of the acceptability of the proposal, I acknowledge that interested parties have raised concerns in relation to a number of matters, in addition to those relating to the location and character and appearance.
8. The siting of the proposed dwellings is a matter which is reserved for future consideration, however the illustrative masterplan indicates the construction of dwellings in the southeastern corner of the site, near to existing properties. Given the length of the gardens of these existing properties, and bearing in mind that the placement of dwellings is not known at this stage, I am satisfied that the proposal would not result in significant harm to the occupiers of neighbouring properties in respect of privacy. Any potential increase in the use of existing footpaths would not affect the privacy of existing occupants to a significant degree. Any proposed boundary treatment is a matter for future consideration.
9. I note the concerns about the increased use of the existing footpath and its suitability for such use given its condition. However, the masterplan makes provision for new footpath links and a suitably worded condition would require further details of these. I am therefore content that suitable pedestrian links would be provided. The indicative location of the play areas would not be directly adjacent to any existing dwelling. Nevertheless, this is a matter which is reserved for future consideration and would therefore be subject to further scrutiny. There is no reason to assume that the proposal would result in an increase in anti-social behaviour in the area. Any damage to property which may occur would be a private matter between the parties involved.
10. The application was accompanied by a Drainage Connectivity Survey Report and a Sustainable Drainage Statement. The Council consider that subject to conditions to secure a scheme for a surface water drainage strategy and a construction surface water management plan, the proposals are acceptable in terms of drainage and flood risk. In the absence of substantive evidence to the contrary, I have no reason to dispute these findings.

11. The Council have some misgivings in relation to the submitted Bird and Reptile Survey Report, although they are content that a precautionary method of working, combined with a suitable landscape buffer would ensure suitable habitat for reptiles is provided. The conditions include a requirement for a detailed reptile mitigation strategy which would secure these elements. Whilst the Preliminary Ecological Appraisal does not specifically mention deer, conditions would ensure areas providing habitat would be retained and created. Subject to these conditions I am satisfied that the proposal would not have a harmful effect on wildlife.
12. I acknowledge concerns about the potential contamination at the site, however a condition would ensure that the land is appropriately remediated. Whether existing houses were built on contaminated land is beyond the scope of this appeal.
13. The Highway Authority consider that the access would be capable of serving the proposed development and that traffic generated by the development would not have a detrimental impact on the existing highway network. In the absence of compelling evidence to the contrary, I have no basis upon which to come to a contrary conclusion. I accept that the proposal would involve the loss of agricultural land however there is limited evidence before me regarding the benefits of the current use of the land and that this would outweigh the benefits of the scheme.

Planning Obligation

Affordable housing

14. Policy SWDP 15 of the South Worcestershire Development Plan (adopted February 2016) (DP) seeks to secure 40% of units on sites of 15 or more dwellings on greenfield land as affordable housing. Accordingly, the planning obligation makes provision for 40% affordable housing with a tenure split of 67% social rented units, 27% first homes and 6% shared ownership. Based on the evidence before me, there is a need for such housing in the local area. This is therefore necessary to adhere to the requirements of the development plan and to secure affordable housing as a benefit of the scheme.

Community transport contribution

15. Policy SWDP 4 of the DP states that in order to promote more transport choice in rural areas, community transport and innovative transport projects, will be encouraged in conjunction with new development proposals. The Highway Authority have identified a particular need in relation to future elderly and disabled residents to provide access to services and healthcare facilities. A contribution of £1,209 is therefore necessary to ensure suitable transport choice is available to future occupiers.

Early years education contribution

16. The Education Authority forecast that the proposal would yield 5 children who may need places at an early-years setting. The evidence suggests that there is an insufficient level of funded childcare places close to the development. A contribution of £66,366 is necessary to make provision for early years education within a 2-mile radius of the development.

Off-site formal and built sports contributions

17. Policy SWDP 39 of the DP sets out the requirements for open space, community uses and sports pitches in new development. The policy lists a limited range of typologies however the Council has commissioned a detailed report to identify current needs in relation to sports facility provision. This identifies a need for a range of facilities to meet the demand associated with new development. Contributions of £79,722 for formal sports pitches and £29,292 for built sports facilities, comprising improvements to facilities at Pershore High School are necessary to ensure the proposal makes adequate provision towards sports facilities.

Primary care contribution

18. The proposal would result in additional demand upon primary healthcare services through the introduction of new residents into the area. The amount of floorspace required to meet this demand has been ascertained on the basis of optimal list size per GP and a cost associated with this provision has been calculated. A contribution of £28,800 is necessary to mitigate the demand upon primary care which would arise as a result of the development.

On-site public open space requirements

19. Policy SWDP39 of the DP outlines open space requirements in respect of new development. This equates to a required provision of 1547.22sqm for the proposed development. The obligation requires the submission of an on-site public open space scheme and arrangements for the subsequent implementation, maintenance and management of the public open space. It also provides an alternative approach in respect of contributions towards off-site provision in the event that the requirements cannot be delivered on-site. This obligation is necessary to adhere to the requirements of the development plan.

Conclusion on planning obligations

20. For the reasons set out above, I am satisfied that the planning obligations are necessary to make the development acceptable in planning terms, are directly related to the development and are fairly and reasonably related in scale and kind to the development. They would therefore comply with regulation 122(2) of the Community Infrastructure Levy Regulations 2010 and paragraph 57 of the Framework.

Conditions

21. Where necessary, I have undertaken some minor editing and rationalisation of the conditions proposed by the Council where they meet the tests set out in paragraph 56 of the Framework in the interests of precision and clarity. To ensure an acceptable form of development is delivered, it is necessary to secure details of the reserved matters prior to the commencement of development. The plans should be specified in the interest of certainty and I have not listed any plans which are indicative or illustrative.
22. In addition to those conditions already referred to in my reasoning above, a condition requiring the submission of a Construction Environmental Management Plan is necessary to ensure that the construction of the

development does not result in unacceptable impacts upon the environment and biodiversity, and that vehicular movements associated with construction have an acceptable effect on the area.

23. A condition requiring the protection of trees during construction is necessary to ensure that no harm occurs to the trees which are to be retained. The provision of a scheme for the foul drainage of the site is necessary to ensure that adequate provision is made for foul sewerage infrastructure. A written scheme of investigation is necessary to ensure that any archaeological remains which may exist at the site are appropriately protected and recorded.
24. To ensure a satisfactory appearance and suitable landscaping as part of the reserved matters, conditions requiring details of finished levels and hard and soft landscaping are required. Details of lighting are required to ensure a satisfactory appearance and to ensure biodiversity is conserved and enhanced. The implementation of renewable and/or low carbon energy generation is justified by Local Plan Policy SWDP27 which seeks to reduce carbon dioxide emissions.
25. A condition controlling hours of work is necessary in order to ensure that the construction phase of the development does not have an unacceptable effect on the living conditions of nearby occupiers. To ensure that the proposal has an acceptable impact on highway safety and that the site is also accessible by non-car modes of transport conditions requiring the provision of visibility splays, footway and cycleways, footpath links, pedestrian crossing, residential travel welcome pack and cycle parking are necessary. An up-to-date noise assessment is required to ensure that the proposal provides acceptable living conditions for future occupiers.
26. A condition requiring the provision of electric vehicle charging points has been suggested however this is now a requirement of the Building Regulations and is therefore unnecessary.

Conclusion

27. The proposed development would conflict with the development plan. However, the adverse impacts of the proposal would not significantly and demonstrably outweigh its benefits. Therefore, the material considerations indicate that a decision should be made other than in accordance with the development plan. Accordingly, the appeal is allowed, and planning permission is granted.

E Pickernell

INSPECTOR

Schedule of conditions

1. Details of appearance, landscaping, layout and scale ("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 three years from the date of this permission.
3. The development hereby permitted shall take place not later than two 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 drawing nos:
 - Location Plan: PA_01
 - Proposed Site Access - 21400-01 Rev D
5. No development shall take place (including any ground works, demolition or site clearance) until a construction environmental management plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP shall be based on appropriate up-to-date ecological surveys and include the following:
 - a) risk assessment of potentially damaging construction activities;
 - b) identification of "biodiversity protection zones";
 - c) practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements);
 - d) detailed reptile mitigation strategy;
 - e) the location and timing of sensitive works to avoid harm to biodiversity features;
 - f) the times during construction when specialist ecologists need to be present on site to oversee works;
 - g) responsible persons and lines of communication;
 - h) the role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person;
 - i) use of protective fences, exclusion barriers and warning signs;
 - j) measures to ensure that vehicles leaving the site do not deposit mud or other detritus on the public highway;
 - k) details of site operative parking areas, material storage areas and the location of site operatives' facilities;
 - l) the arrangements for unloading and manoeuvring of delivery vehicles;
 - m) traffic management measures for construction vehicles on Allen's Hill and the commercial access road, to include temporary signage and the use of a banksman to oversee all vehicular manoeuvres, as necessary; and

- n) measures to demonstrate that those immediately affected by the construction works will be kept informed and due consideration and courtesy will be shown to the local community.

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

6. Prior to the commencement of development hereby approved a Landscape and Ecological Management Plan (LEMP) shall be submitted to and agreed in writing by the local planning authority. The content of the LEMP shall include the following:

- a) details (type and location) of wildlife boxes and hibernacula;
- b) description and evaluation of the features to be managed;
- c) ecological trends and constraints on site that might influence management;
- d) aims and objectives of management;
- e) appropriate management options for achieving aims and objectives;
- f) prescriptions for management actions;
- g) preparation of a work schedule, including an annual work plan capable of being rolled forward over a five-year period and for a minimum of 30 years thereafter;
- h) details of the body or organisation responsible for implementation of the plan; and
- i) on-going monitoring and remedial measures.

The plan shall also set out where the results of the monitoring show that conservation aims and objectives of the LEMP are not being met, how contingencies and/or remedial action identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The LEMP will be implemented in accordance with the approved details.

7. No development shall take place including site clearance, demolition, materials delivery, vehicular movement and erection of site huts until temporary fencing for the protection of all retained trees/hedges on site and trees outside the site whose Root Protection Areas fall within the site is erected in accordance with BS 5837:2012 (Trees in Relation to Design, Demolition and Construction). The protective fencing shall remain in place until the completion of development. Nothing shall be stored or placed (including soil), nor shall any ground levels be altered within the fenced area. There shall be no burning of any material within 10 metres of the extent of the canopy of any retained tree/hedge.
8. No works or development shall take place until a construction surface water management plan has been submitted to and approved in writing by the local planning authority. The plan shall include how surface water will be managed during the construction phase, including site clearance

and soil stripping. The plan shall include drawings of any temporary drainage systems, a timeline of construction and measures to mitigate the risk of pollution (including silt) of the water environment and offsite flood risk. The plan shall detail how the approved permanent surface water drainage system shall be remediated during the construction phase. The approved construction surface water management plan shall be implemented as soon as works start on site and thereafter maintained during the full duration of the construction phase.

9. Prior to the commencement of the development, with the exception of the proposed access road, full details of a scheme for the provision of foul drainage for the site shall be submitted to and approved in writing by the local planning authority. These details shall:
 - a) include the design of all on and off-site foul sewerage infrastructure, the diameters of proposed pipes and the capacity of any on or off-site storage;
 - b) include a timetable and programme for the provision and maintenance of the foul sewerage infrastructure; and
 - c) demonstrate that, where connection to a public sewer is proposed, the additional foul sewerage discharge can be accommodated within the public sewer system without increasing the risk of flooding or backing up of the existing system on the site or elsewhere

The development shall be carried out in accordance with the approved details and the approved timetable and programme. Thereafter the foul sewerage infrastructure shall be retained and maintained in accordance with the approved timetable and programme.

10. No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 30 days of the report being completed and approved in writing by the local planning authority.

11. No development shall take place until a Written Scheme of Archaeological Investigation shall have been submitted to and approved in writing by the local planning authority. 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) the provision to be made for analysis of the site investigation and recording;
- d) the provision to be made for publication and dissemination of the analysis and records of the site investigation;
- e) the provision to be made for archive deposition of the analysis and records of the site investigation;
- f) the nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Archaeological Investigation.

No demolition/development shall take place other than in accordance with the Written Scheme of Archaeological Investigation

12. The following details shall be submitted as part of the reserved matters:

- a) details of the boundary treatment;
- b) details of the surfaces of drives, cycle and footways;
- c) a plan showing the planting layout of proposed tree, hedge, shrub and grass areas;
- d) a schedule of proposed planting – indicating species, size at time of planting and numbers/densities of plants;
- e) a written specification outlining cultivation and other operations associated with plant and grass establishment;
- f) a programme of implementation for the above; and
- g) a scheme of maintenance, including watering and the control of competitive weed growth, for a minimum period of five years from first planting.
- h) Full details of the finished levels, above ordnance datum of the ground floors of the proposed buildings, in relation to existing ground levels.

The details shall include a green buffer adjacent to the A44 in general accordance with the details shown on submitted drawing number PA_06 Rev A (Alternative Illustrative Masterplan).

The hard and soft landscaping shall be provided in accordance with the agreed programme and maintained in accordance with the agreed scheme

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

13. As part of the reserved matters 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:

- a) The overall predicted energy requirements of the approved development
- b) The predicted energy generation from the proposed renewable/low carbon energy measures; and
- c) An implementation timetable for the proposed measures

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

14. The details to be submitted with the reserved matters shall include a footpath link south to the A44 in the general location indicated on submitted drawing number PA_06 Rev A (Alternative Illustrative Masterplan). The development shall not be occupied until the footpath link has been provided in accordance with the approved details. Thereafter the footpath link shall be retained in accordance with the approved details.

15. Notwithstanding the submitted Noise Assessment, a revised Noise Assessment shall be submitted with the reserved matters. The revised Noise Assessment shall consider the detailed layout to be submitted with the reserved matters and include an updated base survey and onsite noise measurements.

16. No works in connection with site drainage shall commence until a scheme for a surface water drainage strategy for the development has been submitted to and approved in writing by the local planning authority. The scheme shall include details of surface water drainage measures, including for hardstanding areas, and shall conform with the non-statutory technical standards for SuDS (Defra 2015) and the Sustainable Drainage Statement, April 2023, PVW-BWB-ZZ-XX-RP-CD-0001_SDS. If infiltration drainage is not possible on this site, an alternative method of surface water disposal shall be submitted for approval. If a connection to a sewer system is proposed, then evidence shall be submitted of the in-principle approval of Severn Trent water for this connection. The scheme shall include run off treatment proposals for surface water drainage and shall include detailed design drawings and installation of the ditch along the southern boundary as per the Illustrative drainage strategy (PVW-BWB-ZZ-XX-DR-CD-0002, S2, P02). Where the scheme includes communal surface water drainage assets proposals for dealing with the future maintenance of these assets shall be included. The scheme shall include proposals for informing future homeowners or occupiers of the arrangements for maintenance of communal surface water drainage assets. The approved surface water drainage scheme shall be

implemented prior to the first use of the development and thereafter maintained in accordance with the agreed scheme.

17. Before the development hereby permitted is first occupied/used, details of any external lighting to be provided in association with the development shall be submitted to and approved in writing by the local planning authority. The details shall include times when the external lighting will not be switched on. Only external lighting in accordance with approved details shall be provided on the application site. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (or any Order revoking or re-enacting that Order with or without modification) there shall be no other external lighting provided on the application site.
18. Prior to the first occupation of the development hereby approve internal visibility splays shall be provided in accordance with details which shall first have been submitted to and approved in writing by the local planning authority. The visibility splays shall be measured from a point of 1.05m above road level at the centre of the access road to the application site and 2.4 metres back from the near side edge of the adjoining carriageway, (measured perpendicularly), for a distance of 25 metres in both directions and measured along the nearside edge of the adjoining road, to a vertical offset distance of 0.6m from the edge of the carriageway. Thereafter, nothing shall be planted, erected and/or allowed to grow on the triangular area of land so formed which would obstruct the visibility described above.
19. The development hereby approved shall not be occupied until the access including footway and cycleway shown on Drg. No. 21400-01D has been provided. Thereafter the access shall be retained in accordance with the approved details.
20. The development hereby approved shall not be occupied until an uncontrolled pedestrian crossing point on public right of way PV-515 in the vicinity of site access (Ordnance Survey Grid Reference (OSGR) SO 9505 4864) has been provided in accordance with details which shall first be submitted to and approved in writing by the local planning authority.
21. The development hereby approved shall not be occupied until a residential Travel Welcome Pack promoting sustainable forms of access to the development, has been submitted to and approved in writing by the local planning authority. The pack shall be provided to each resident at the point of occupation.
22. No dwelling hereby permitted shall be occupied until sheltered and secure cycle parking has been provided in accordance with the standards and dimensions required by Worcestershire County Council's Streetscape Design Guide. Thereafter, the cycle parking shall be retained in accordance with the approved details.
23. Demolition, clearance or construction work and deliveries to and from the site in connection with the development hereby approved shall only take place between the hours of 08:00 and 18:00 Monday to Friday and 08:00

– 13:00 on Saturdays and not at any time on Sundays or on Bank or Public Holidays.

End of Schedule