



Appeal Decision

Site visit made on 18 September 2024

by C Billings BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30th October 2024

Appeal Ref: APP/J1860/W/24/3343527

Land off A443, Abberley (OS E374520 N267263)

- 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 Mrs H Weatherall against the decision of Malvern Hills District Council.
 - The application Ref is M/22/01440/PIP.
 - The development proposed is permission in principle for the construction of up to 7no. dwellings.
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Decision

1. The appeal is allowed and permission in principle is granted for residential development comprising a minimum of 5 and a maximum of 7 dwellings at Land off A443, Abberley (OS E374520 N267263) in accordance with the terms of the application, Ref M/22/01440/PIP dated 26 September 2022.

Preliminary Matters

2. The description of development in the banner differs to that on the original application form, as it was amended to such by agreement between the main parties during the consideration of the permission in principle application. The site address has been taken from the application form, which together with the submitted location plan appropriately identifies the site and its location.

Procedural Matters

3. The proposal is for permission in principle. The 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 2 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 2 stages.
4. The scope of the considerations for permission in principle is limited to location, land use and the amount of development permitted, as set out in the PPG. 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.

Background and Main Issues

5. The Council refused permission in principle on the basis that the site is within the open countryside in an elevated location, where the proposed residential

development would be unduly prominent and adversely affect the landscape character of the area, in particular regard to key views identified within the Abberley Neighbourhood Plan (ANP), made July 2021.

6. In view of the above, the main issues in this appeal are whether or not the location, proposed land use, and amount of development is suitable, having regard to policies for the location of new residential development and, the effect upon the landscape character of the area.

Reasons

7. Abberley Common is a category 1¹ settlement as set out in Policy SWDP 2 of the SWDP, where certain categories of housing development are supported. However, the site lies outside the settlement in open countryside, where Part C of the Policy SWDP 2 strictly controls development. The site is not allocated for housing under Policy SWDP 59 of the SWDP. The proposal is not advanced as rural worker dwellings, nor is it a proposed affordable housing scheme and so, is not a rural exception site under Policy SWDP 12 of the SWDP. Also, due to its location outside the settlement boundary, the proposed development does not comprise infill housing within a settlement.
8. Therefore, in terms of the spatial strategy for the District, the principle of the proposed residential development in this location would be in conflict with Policy SWDP 2 of the SWDP. Notwithstanding this, the proposal would not result in the development of isolated homes in the countryside, so I find no conflict with paragraph 84 of the National Planning Policy Framework (the Framework).
9. The appeal site is part of an agricultural field used for grazing, with traditional farmland hedgerow to its roadside/A443 boundary and along its' side boundary adjacent to a new residential development in Long Meadow. While the evidence provided shows that the site was previously part of an ancient orchard, there are no longer any trees within the central parts of the site. The appeal site comprises one end of a field, which is generally at a lower ground level than the rest of the field. Beyond the site boundary, the wider field topography rises up more steeply towards the B4202.
10. The appeal site is located within the Timbered Plateau Farmlands landscape type character area. The primary characteristics of such landscape area are upstanding plateau of rolling topography dissected by broad valleys, filtered medium/long distance views, ancient woodlands, and mixed hedges of scattered hedgerow oaks.
11. The proposed residential development, through the introduction of built form on open grazing land, would inevitably alter the existing rural character of the appeal site. However, the proposal does not involve removal of woodland nor does it propose changes to the land topography. Most of the appeal site is set within a dip at one end of a field, relatively enclosed by hedges to two sides, which reduces its visibility from the A443 and with rising land topography to its other sides. While the proposal would likely require the removal of some boundary hedgerow to accommodate the vehicular access and associated visibility splay for the new housing development, the extent of such removal is

¹ Based on Figure 2-Key Diagram of the SWDP. I acknowledge that Abberley Parish Council and the ANP set out that Abberley Common is a category 2 settlement and that Abberley Common has been put forward to be downgraded to a category 2 settlement in the review of the development plan.

- not included as part of this permission in principle application. Therefore, potential landscape harm caused as a result of this is unknown at this stage.
12. In view of such, I find the proposal would not adversely affect the key characteristic of the landscape character area. Despite that the open nature of the wider parcel of agricultural land and the rising topography of it, makes the appeal site prominent over the hedgerow from the roadside footway along the B4202. The residential development of the appeal site per se, would not significantly affect the rolling nature of the land or important landscape characteristics.
 13. Consideration of the retention of important boundary hedgerows and potential change in land levels are not matters for my detailed consideration at the permission in principle stage. However, the proposal could be delivered in a way that does not alter the overall topography of the site and, insofar as they relate to the main issue under consideration, I am satisfied that due to the size of the appeal site and the quantum of development, land levels and landscaping could be appropriately considered at the technical details consent stage to secure an acceptable development.
 14. In terms of the impact of the proposed development on key views, as identified within Policy ABY6 of the Abberley Neighbourhood Plan (ANP). The appeal site is at the lower part of the wider field and any new houses within the site would be seen against the backdrop of the existing adjacent new housing development. Therefore, a high quality sympathetically designed scheme at the technical details consent stage, would ensure important key views of The Common and Abberley Park would remain clearly visible over the rooftops of proposed new housing within the site. This would ensure protection of the key view, KV8, despite that the appeal site is prominent from the B4202 and that the proposed development would also be visible therefrom.
 15. In respect of the other key views referred to in the reason for refusal. I observed that due to foreground trees and the land topography allowing only limited glimpsed views of the appeal site from KV9, the important key views across from the Worcestershire Way towards Abberley Common would not be interrupted by the proposed residential development of the appeal site. Also, due to the fact that the appeal site is within a land depression and adjacent to existing new housing development, long distance key views of The Common from Abberley Clocktower (key view KV10) would not be obscured, nor would the proposed development intrude into it.
 16. The number of dwellings proposed would ensure an appropriate density, comparable to that of the adjoining new residential development. Also, this would allow for a spacious residential layout, considerate of and sympathetic to its edge of settlement rural setting.
 17. As a matter of judgement, based upon the submissions before me, I am satisfied that subject to a carefully and sensitively designed scheme at the technical details consent stage, a development could be designed which would have sympathy with the surrounding landscape character, would ensure protection of the key landscape characteristics of the area, as set out by the Council, and prevent and/or limit harmful effects upon identified key views.
 18. For the reasons set out above, I find conflict with Policy SWDP 2 of the SWDP in terms of the location, land use and amount of the proposed development

outside the settlement in open countryside. However, in terms of location, land use and amount of development, the proposal could be designed so that it would not conflict with Policy SWDP 25 of the SWDP and Policy ABY5 of the ANP, which set out, amongst other matters, that development proposals should integrate with the character of the landscape setting, conserving primary landscape characteristics, features and attributes and, set out matters that I am satisfied can be addressed at the technical details consent stage. Also, there would be no conflict with Policy ABY6 of the ANP, which sets out that development proposals should not have a detrimental impact on the key features of the key views identified.

19. Additionally, the proposal would, subject to details to be considered at the technical details consent stage, ensure the protection and enhancement of valued landscapes, in line with paragraph 180 of the Framework, and meet the environmental objective, to protect and enhance our natural environment, as set out in paragraph 8 of the Framework.

Other Matters

20. Concerns have been raised by interested parties regarding various matters of technical detail in relation to the proposed residential development. These include that the site is within a coal mining risk area, drainage design considerations and surface water flooding concerns, the capacity of local infrastructure, especially in relation to the primary school and doctors' surgery. Loss of hedgerow and ancient orchard, that the access would be on a busy main road and cause highway safety issues for drivers and pedestrians, loss of light and privacy of the occupiers of neighbouring dwellings, and the integrity of the boundary retaining wall of residential properties in Long Meadow.
21. Having regard to the advice in the PPG, many such technical matters do not fall to be considered at the permission in principle stage of development, and so it is not necessary for me to consider such as part of this appeal. Such matters would be appropriately considered at the second, technical details consent stage. Although, no objections have been raised by the County Highways and the Coal Authority against the proposal, to suggest there would be any unsurmountable issues in regard to such matters when they are considered at the technical details consent stage. Therefore, withholding permission in principle on such grounds would not be justified.
22. The Parish Council and local residents have also raised concerns about the loss of agricultural land and that there is no local housing need for development, as the number of dwellings granted permission in Abberley already exceeds the number allocated in the SWDP and the Abberley Housing Needs Assessment (2019) and the sustainability of the site. I have not been provided with substantive evidence to demonstrate that the appeal site is of such a category of quality agricultural land that planning policies dictate it must be protected from all development, nor that there is a particular deficit of this quality of agricultural land or grazing land in general, within the District. While there may be some capacity issues with local services, the proposed housing scheme is small, and the additional future occupiers of the new homes would support and help to sustain such services.
23. While there might be some capacity issues with local services, I have not been provided with substantive evidence demonstrating the matters could not be addressed through the relevant funding mechanisms for new development, or

the nature of any existing issues warrant dismissing the appeal. The Council has not raised an objection to the appeal scheme in this regard. The proposed housing scheme is limited in number and the additional future occupiers of the new homes would also help to support and help to sustain some such rural services.

24. In respect of local housing need, the ANP does not set a maximum figure for new housing within the Neighbourhood Plan area. Furthermore, the housing requirement figures provided by the South Worcestershire Councils in July 2019 are only indicative and are to be considered as a minimum requirement that could be subject to change. I understand that the indicative requirement up to 2030 is for less than a single dwelling and that, two of the three allocated sites in the SWDP have delivered 22 additional dwellings over and above the indicative number of dwellings assumed in the SWDP allocations for the area. However, this does not subsequently mean that the proposed development would be in conflict with ANP policy in respect of new housing.
25. Accordingly, I find the proposal would not conflict with Policy ABY2 of the ANP, which relates to the type of new housing and, sets out that applicants should take account of the requirements of the most up to date local Housing Needs Survey. Particularly as the referenced housing needs survey within the ANP is now more than 5 years old and, the District Council have set out that as of the 1 April 2023 the 5-year housing land supply for Malvern Hills District is only 3.31 years.

Planning Balance

26. While I have found there would be conflict with Policy SWDP2 of the SWDP, in terms of the location of the proposed development, it is undisputed that the Council cannot demonstrate a 5-year housing land supply. Due to such housing shortfall, paragraph 11d) of the Framework is engaged.
27. In these circumstances, footnote 8 of the Framework establishes that the policies which are most important for determining the application are deemed out-of-date. Accordingly, the presumption of sustainable development applies unless the application of policies in the Framework that protect areas or assets of particular importance provides a clear reason for refusing the development, or any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against policies in the Framework taken as a whole.
28. Having regard to footnote 7 of the Framework, there are no specific landscape, heritage, or habitat designations applicable to the appeal site. The Council's specialist drainage advisor has advised that a sustainable approach to surface water management should be considered and that, this could be secured via condition. Such detailed condition matters would appropriately be considered at the technical details consent stage. Therefore, from the evidence before me, I have no reason to believe that appeal site flood risk would provide a clear reason for refusing the proposed development having regard to footnote 7 and the relevant Framework policies in this regard at this permission in principle stage.
29. Paragraph 14 of the Framework advises that in situations where the presumption at paragraph 11d) applies to applications involving the provision of housing, the adverse impact of allowing development that conflicts with the

neighbourhood plan (NP) is likely to significantly and demonstrably outweigh the benefits, provided the NP became part of the development plan five years or less before the date on which the decision is made, and the NP contains policies and allocations to meet its identified housing requirement.

30. The ANP (made July 2021) is less than 5 years old. The appeal site is not allocated for housing within the ANP, although, the local housing needs survey is more than 5 years old and refers to only indicative figures, with no maximum figure identified for new housing within the ANP area. On such basis, I find there is no conflict with policies contained in the ANP in regard to housing delivery. Furthermore, the Council did not base its reason for refusal in terms of such conflict with the ANP either. Moreover, I have found the proposal does not conflict with Policies ABY5 and ABY6 of the ANP. Even if I were to have found a conflict with ANP provisions, paragraph 14 of the Framework is indicative, and the overall balance is a matter of judgement.
31. The proposal would deliver additional housing in an area where there is significant housing supply shortfall compared to the level required by national policy. The provisions of the magnitude of dwellings sought would be a significant benefit towards meeting Framework objectives for the delivery of housing arising from the proposed development. Additionally, there would be temporary economic benefits during design and construction of the development. The Preliminary Ecological Appraisal identifies the proposal would provide ecological enhancement within the appeal site. There are local services within the village of Abberley, including a primary school, village hall and village shop and post office, which provide a reasonable level of local services for the settlement, which future occupiers of the development could walk to and would help support and sustain the vitality of.
32. Even though there would be loss of part of an existing agricultural field, and the appearance of the appeal site would change, I have found that the proposed development could ensure that there would not be significantly harmful effects to the landscape character or key landscape views, such that there would be no conflict with the ANP or the SWDP in such regard.
33. Balanced against the significant benefits of housing delivery, which is a key aim of the Framework, the harm arising from the proposed development by virtue of the conflict with Policy SWDP 2 of the SWDP, does not significantly and demonstrably outweigh the benefits, when weighed against the policies of the Framework, as a whole. Consequently, the presumption of sustainable development applies and this indicates that the appeal should be allowed and permission in principle granted.

Conditions

34. The PPG advises that there is a default time limit duration of 3 years for a permission in principle and that, it is not possible for conditions to be attached to a grant of permission in principle. The PPG also advises that the amount of residential development must be expressed as a range, indicating the minimum and maximum net number of dwellings, which are, in principle, permitted.
35. The description of the development was amended in agreement by the main parties, from a proposed range of 5-9 dwellings to up to 7 dwellings. Therefore, I do not consider it would prejudice either of the main parties to include a range of 5-7 dwellings in granting permission in principle.

Conclusion

36. Section 38(6) of the Planning and Compulsory Purchase Act requires that decisions be made in accordance with the development plan unless material considerations indicate otherwise. In this instance, the presumption in favour of sustainable development is a material consideration of significant weight and indicates that a decision contrary to the development plan is justified.
37. I conclude that any adverse impacts of granting permission would not significantly and demonstrably outweigh the benefits of the proposal when weighed against the policies in the Framework as a whole. In view of paragraph 11d) of the Framework, the appeal scheme would represent a sustainable form of development in the terms of the Framework for which there is a presumption in favour. Therefore, the material considerations indicate a decision shall be made other than in accordance with the development plan.
38. Accordingly, for the reasons set out above, the appeal should be allowed.

C Billings

INSPECTOR