

Appeal Decision

Site visit made on 29 August 2024

by G Powys Jones MSc FRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 November 2024

Appeal Ref: APP/H1840/W/24/3341252

Land to rear of Brock House, Low Road, Church Lench, Worcestershire, WR11 4UH

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Mark Donald of H2Land Ltd against the decision of Wychavon District Council.
 - The application Ref is W/22/02027/OUT.
 - The development proposed is for the erection of up to 19 dwellings (including affordable homes) together with associated works, SUD's and landscaping.
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Decision

1. The appeal is allowed and outline planning permission is granted for the erection of up to 19 dwellings (including affordable homes) together with associated works, SUD's and landscaping at land to rear of Brock House, Low Road, Church Lench, Worcestershire, WR11 4UH in accordance with the terms of the application Ref W/22/02027/OUT subject to the conditions set out in the attached Schedule.

Preliminary and procedural matters.

2. The application was submitted in outline, with all matters of detail, access apart, reserved for future approval. The application was accompanied by a location plan showing the land subject of the proposal. Other plans or drawings were also submitted, including a site layout, street elevations and drainage strategy. Since all matters of detail, bar access, are reserved, I have treated all plans and drawings, bar the location plan, as indicative or illustrative of the appellant's proposals.
3. Access is not reserved for future approval and is to be obtained from the site along an existing track to a junction with Low Road. I saw that the track served a single dwelling and some agricultural land. Technical reports, including a junction visibility exercise accompanied the application, and I note that neither the Council nor Local Highway Authority, notwithstanding its original concerns, object to the specific access arrangements. Both authorities are satisfied that an acceptable access meeting the appropriate technical standards and requirements can be achieved. Judging from what I have seen and read I have no reason to disagree.
4. The Council's contends that one of the reasons of refusal was incorrectly drafted and should have referred to another development plan policy instead of

the one cited¹. The appellant argues that the reason for refusal is accurate and reflects the electronic record of the Planning Committee and its approved minutes. That appears to be the case; nevertheless, my assessment is necessarily made having regard to all policies of the development plan considered relevant.

5. Reference is made by the parties to the South Worcestershire Development Plan Review (SWDPR). Although submitted for examination, supporting evidence and other reports are still to be finalised, and hearings are yet to be arranged. Accordingly, the emerging plan's policies carry limited weight in this appeal.
6. The applicant has made an application for a partial award of costs against the Council. This is the subject of a separate decision.

Main issues

7. The main issues are: (a) whether this is an appropriate location for new dwellings having regard to local and national policies, and (b) the effect of the proposals on the character and appearance of its surroundings.

Reasons

Location

8. SWDP Policy SWDP1(A) provides:

When considering development proposals, the Local Authority will take a positive approach that reflects the presumption in favour of sustainable development contained in the National Planning Policy Framework².

9. Section D of the same policy is also highly relevant in that it sets out clearly the Council's position in respect of decisions to be taken in circumstances where relevant policies are considered out-of-date.
10. The main parties agree that the appeal site is located outside the defined development boundary for Church Lench. Therefore, the site is in the open countryside in terms of local policy. Policy SWDP2, which deals with Development Strategy and Settlement Hierarchy, confirms that the strategy is based on several principles, including safeguarding the open countryside. Development in the countryside will be strictly limited to specific development types. The types of development supported do not include market housing such as that forming the most part of this proposal, and the development is not promoted on the basis that it represents an exception site in the context of affordable housing provision.
11. Church Lench is identified as a Category 3 village in the SWDP³. The range of services and facilities provision is limited⁴, and since local public transport services are not what I would regard as frequent, it is inevitable that residents of the proposed housing would likely to be as reliant on their private car as

¹ That is, policy SWDP2 rather than SWDP1 of the South Worcestershire Development Plan (SWDP).

² The Framework

³ Proposed for upgrading to Category 2 in the SWDPR, based on evidence prepared for the review by local councils in respect of village facilities and rural transport (VFRTS)

⁴ including a village hall, a primary school and a sports club.

- existing residents of the village for employment, retail and secondary education.
12. Some local residents point to local road conditions in the context of active travel. The lack of street lighting and pavements between the site and the main social facilities would serve to discourage future residents from walking and cycling and would likely further encourage the use of the private car. This is possibly the case, but even in my relatively short stay at the site, I saw several people walking, exercising their dogs and cycling, albeit it was a clear, fine day. The absence of formal footways did not appear to act as a disincentive to exercise, and as I saw, the generous green swards sited alongside the highway act as a refuge, if necessary, when vehicles pass.
 13. The Framework advises that "*Where there are groups of smaller settlements, development in one village may support services in a village nearby*"⁵ and "*opportunities to maximise sustainable transport solutions will vary between rural and urban areas and this should be taken into account in both plan-making and decision taking*"⁶. These are important considerations to be taken into account in the context of the appropriateness of the location, having regard to the policies of the Framework read as a whole.
 14. The appellant has demonstrated with reference to the location of other villages and towns within 5 miles that the essential services and facilities for everyday living are available. Evesham, in particular, is described in the SWDP as providing a comprehensive range of local services and employment opportunities for its residents and the rural hinterland.
 15. Having regard to the above I conclude that the proposal conflicts with the specific requirements for development in the countryside in Policies SWDP1 and SWDP2 of the SWDP. Whilst this represents the starting point in my considerations the material considerations in the form of national policy also weigh heavily arising in particular from the agreed and serious shortfall in housing land supply. This is considered further in the planning balance and conclusions.

Character and appearance

16. The appeal site is comprised of a broadly rectangular, generally flat field set to the rear of about half a dozen dwellings fronting Low Road. The Worcestershire County Council Landscape Character Assessment (LCA) identifies the local landscape as Timbered Farmlands Landscape wherein the predominant settlement pattern is described as dispersed comprised of farmstead and hamlets. The landscape designation however relates to a relatively large geographical area whereas the appeal site is set against the boundaries of several of the village's dwellings, whose influence and presence is felt on the site, given that some of the separating boundaries are weak.
17. Nonetheless the proposal would give rise to a form of development generally at odds with the village's over-riding pattern. This is described by some as linear. The village appears to have formed and evolved by the gradual development of ribbons radiating from the centre along the village's main routes. However,

⁵ Para 83

⁶ Para 109

there are instances where the depth of development is greater, most notably in and around The Croft.

18. However, whilst the development may not follow the over-riding settlement pattern its visual impact on the village as a whole, or on substantial parts of it would be minimal. This is because the site is visually sheltered from most points in the village and, as originally acknowledged by the Council's officers, the site is very well screened by trees and other vegetation from the that part of the countryside remaining undeveloped.
19. The erection of dwellings on the site would thus have a very limited, defined impact. Those who would feel its effects most are those residents backing onto the site, whose current verdant views would be largely curtailed. However, judicious planting and screening on boundaries could mitigate this loss and development would be sufficiently far away to ensure that living conditions would not be harmed.
20. The illustrative plans show that there is scope for well landscaped boundary treatments as there is for a central open area thus providing opportunities for a healthy level of green infrastructure and biodiversity gain.
21. Taking all the above into account, I conclude that any harm to the character and appearance of the area would be minimal and localised, and the development could be successfully integrated into its surroundings by the adoption of high-quality design, layout and landscaping at reserved matters stage. Accordingly, I find no material conflict with the main objectives of policy SWDP21 & SWDP25 since there is no good reason why a development of a high-quality design, integrating effectively with and in keeping with its surroundings and surrounding landscape should not be evolved, and that remains principally within the control of the Council at reserved matters stage.

Other matters

22. The original application drew many objections from village residents, and further representations were made in respect of the appeal. The Church Lench Parish Council and an adjacent Parish Council also submitted objections. These concentrated on issues in relation to development plan policies; sustainability; highway and pedestrian safety; landscape impact; the settlement's form and its facilities. All such planning-related matters raised in the representations have been taken into account.
23. Reference has been made to another application for planning permission affecting the site, but that has little or no influence on my considerations.

Unilateral Undertaking

24. An executed unilateral obligation under s106 of the 1990 Act was submitted to the Inspectorate shortly prior to my site visit. The Council was given an opportunity to comment, which it did. Consequently, the appellant withdrew the original deed and submitted another sometime following my visit.
25. In summary, the executed obligation deals with aspects relating to affordable housing and financial contributions payable to the Council and to the County Council as Highway and Education Authority respectively. The financial

contributions contained in the deed reflect those set out in the officer report⁷ on the original application.

26. It was no part of the appellant's original grounds of appeal that the financial contributions sought by the Council were unreasonable or unlawful⁸. However, in the appellant's final comments the appellant considers that some of the financial contributions requested by the Council have not been justified. This is a late stage in proceedings to raise an issue of this nature, especially when it is accompanied by what appears to me to be new evidence.
27. Nevertheless, I am obliged to consider the content of the deed with regard to the tests set out in Regulation 122. In this respect, having regard to the relevant development plan policies and Supplementary Planning Guidance there is no evidence before me to the effect that the affordable housing provisions and the financial contributions upon which the appellant and Council agree do not meet the appropriate tests. On this basis, and in the absence of any other contrary evidence, I am content that most of the provisions of the obligation satisfy the tests of Regulation 122.
28. The appellant disputes the requirement for financial contributions in respect of the healthcare contribution; part of the school transport contribution and education contribution in respect of the 'first' school, that located in the village.
29. Regarding the former I have had regard to the response to consultation on the application made by the Primary Care Commissioning Manager on behalf of NHS Herefordshire and Worcestershire. I have also taken account of two appeal decisions⁹ referred to by the appellant and to that section of the relevant SPD¹⁰ dealing with Health Contributions. The SPD explains that for development proposals of this size, that is, under 50 dwellings, contributions will only be sought where there is significant existing oversubscription of GP lists. No evidence has been produced that this is the case in the locality. The principal requirement of the SPD's guidance on a development of this size has not therefore been established. This requirement therefore fails to meet the tests of Regulation 122.
30. The part of the public transport contribution with which the appellant is concerned is directed to the transport costs associated with the first school, that is, the village school. It seems unlikely to me given the short distance between the site and the school that any necessity would arise for transport costs to arise on the County Council's part. Accordingly, I do not consider this aspect to meet the tests of Regulation 122, particularly the test of necessity.
31. I have had regard to the response to consultation of the Education Authority and the appellant's submissions. To my mind the Education Authority's comments are directed to the long-term situation at the school and the additional demands arising from the development of the site. The situation described by the appellant may well be ephemeral and temporary – and no attempt at long-term impact has been undertaken. Accordingly, I consider that this aspect of the Education contribution to meet the tests of regulation 122.

⁷ Officers recommended that permission be granted subject to conditions and the execution of a s106 obligation.

⁸ Having regard to Regulation 122 of The Community Infrastructure Levy Regulations 2010 (as amended).

⁹ Refs App/J1860/W/22/3306186 & App/J1860/W/21/3277054

¹⁰ South Worcestershire Developer Contributions – Supplementary Planning Document

32. In conclusion, I find that apart from the two matters set out above in respect of the health contribution and part of the public transport contribution, I am satisfied that the obligation meets the tests of Regulation 122, and I therefore take it into account. It will thus become binding.
33. I note the Appellant's observations regarding Regulation 123, submitted very late in the day as final comments. These observations do not affect my conclusions on the content of the planning obligation and its necessity in the context of the development.

Planning Balance and Conclusions

34. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications must be determined in accordance with the development plan unless material considerations indicate otherwise. The Framework places considerable emphasis on sustainable development and highlights the delivery of new housing as a national priority. It is an important material consideration in planning decisions.
35. Both parties recognise that there is a serious deficit of housing land as required by the Framework. This deems the most important LDP policies relating to settlement policy as being out of date, as recognised by the Council's planning officers. The tilted balance is therefore engaged by Paragraph 11d)ii of the Framework which requires that 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 when assessed as a whole.
36. The fact that policies have to be considered as out of date does not mean that they carry no weight. Having regard to my conclusions on the first main issue they attract some weight but that should be balanced against other aspects of the scheme including its advantages. These include a contribution to improving the local housing land supply; the construction of affordable housing and the economic activity and employment opportunities arising from development.
37. Although clearly situated in countryside the settlement is not so remote or isolated from significant service centres that the anticipated increase in journeys by private vehicle would prove either onerous or unduly unsustainable. Future residents would merely follow the patterns already established by existing residents, and the advent of electric vehicles in the future would assist in reducing emissions.
38. Moreover, as I found in assessing the second main issue, any harm to the character and appearance of the area would be minimal and localised, and the development could be successfully integrated into its surroundings.
39. This is a scheme which has very few adverse impacts which could not be appropriately mitigated, and which do not outweigh its benefits. The provisions of the Framework attract significant weight as a material consideration and indicate to me that the out-of-date policies of the development plan should not prevail.
40. For the above reasons I allow the appeal and grant planning permission subject to conditions which are discussed below.

Conditions

41. The Council has suggested a lengthy list of conditions. The appellant has no objection to any. I shall impose all, albeit some are modified. The reasons for their imposition are the same as set out in the Council's submitted list of conditions.
42. In view of the proximity of the site to existing housing, and given the nature of the proposed access, the scope of the Council's proposed CEMP condition has been expanded. A level of disruption in this part of the village is inevitable during the construction period. The additional measures inserted are designed to minimise the disruption.
43. The proposed condition regarding visibility splays is imposed notwithstanding that not all the visibility splays are within the control of the applicant. However, that which is not is within the public highway, so I am satisfied that the suggested condition may be acceptably imposed.
44. I have taken account of all other matters raised, but no other matter raised is of such strength or significance as to outweigh those considerations that led me to my conclusions.

G Powys Jones

INSPECTOR

SCHEDULE OF CONDITIONS

1. Application for the approval of all reserved matters shall be made to the Local Planning Authority before the expiration of 3 years from the date of this permission. The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.
2. Approval of the details of the appearance, landscaping, layout & scale (hereinafter called 'the reserved matters') shall be obtained from the Local Planning Authority in writing before any development is commenced. The development shall be carried out in accordance with approved reserved matter details.
3. The development hereby permitted shall be carried out in accordance with the following approved plans: the location plan.
4. No development shall take place (including any ground works, demolition or 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 updated survey information and include the following:

- Risk assessment of potentially damaging construction activities;
- Identification of "biodiversity protection zones";
- 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);
- The location and timing of sensitive works to avoid harm to biodiversity features;
- The times during construction when specialist ecologists need to be present;
- Responsible persons on site and lines of communication;
- The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person;
- Use of protective fences, exclusion barriers and warning signs.
- Measures for the suppression of dust and to ensure that vehicles leaving the site do not deposit mud or other detritus on the public highway;
- Details of site operative parking areas, material storage areas and the location of site operatives' facilities (offices, toilets etc);
- the measures proposed to ensure that construction vehicles and workers do not park on the public highway;
- The times of operational site activities and when delivery vehicles are intended to arrive and depart, and arrangements for unloading and manoeuvring.

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

5. Prior to the commencement of the development hereby approved, a scheme providing details of how the development will enhance biodiversity within the site, shall be submitted to and approved in writing by the Local Planning authority. This shall include the following:

- Metric calculations based on the detailed layout and landscape scheme, and calculated using the latest version of the Defra metric and up-to-date baseline habitat and condition assessments and justifications;
- A Biodiversity Net Gain Assessment report, based on the Biodiversity Impact Assessment by Reports4Planning dated 28th August 2023;
- A Biodiversity Enhancement Plan showing the enhancements on the proposed detailed layout;
- A timetable for implementation.

Thereafter, the development shall be carried out in accordance with the approved details.

6. Prior to the first occupation of any of the dwellings hereby permitted, a comprehensive lighting design strategy for biodiversity, including a timetable for its implementation, shall be submitted to and approved in writing by the local planning authority within one month of the commencement of the development hereby approved. The strategy shall:

a) Identify those areas / features that are particularly sensitive for bats and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory, for example, for foraging; and

b) Show how and where external lighting will be installed and impacts of internal light spill (through the provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bat species using their territory or having access to their breeding sites and resting places.

All lighting shall be installed in accordance with the specifications and locations set out in the strategy, and these shall be maintained thereafter in accordance with the strategy. No other external lighting shall be installed without prior consent from the local planning authority.

7. 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 be based on the approved landscape scheme and shall be guided by the approved Biodiversity Net Gain Plan, and maintain this after implementation, and shall include the following:

- Details (type and location) of wildlife boxes, hibernacula and habitat piles;
- Description and evaluation of the features to be managed;
- Ecological trends and constraints on site that might influence management.
- Aims and objectives of management;
- Appropriate management options for achieving aims and objectives;
- Prescriptions for management actions;
- 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;
- Details of the body or organisation responsible for implementation of the plan;
- 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 scheme details.

8. No development shall take place until an Ecological Design Strategy (EDS) has been submitted to and approved in writing by the local planning authority. The strategy shall include the following:
 - Purpose and conservation objectives for the proposed works;
 - Review of site potential and constraints;
 - Detailed designs and working methods to achieve stated objectives (including, where relevant, type and source of materials to be used);
 - Extent and location of proposed works shown on appropriate scale maps and plans;
 - Timetable for implementation, demonstrating that works are aligned with the proposed phasing of development;
 - Persons responsible for implementing the works;
 - Initial aftercare;
 - Details for monitoring and remedial measures, and Details for disposal of any wastes arising from works.

The EDS shall be implemented in accordance with the approved details and all features be retained in that manner thereafter.

9. On completion of the ecological mitigation and enhancement works, a statement of compliance shall be submitted to the local planning authority by the Ecological Clerk of Works confirming that specified and consented measures have been implemented.
10. The development hereby approved shall not be occupied until a detailed boundary treatment plan has been submitted to and approved in writing by the Local Planning Authority. The plan shall include details of the positions, design and materials used in the construction of the boundary treatments to be erected/planted and shall incorporate hedgehog friendly detailing into boundary fencing. The approved details shall be fully implemented before the first occupation of the development and shall be retained thereafter.
11. No works in connection with site drainage shall commence until a scheme for surface water drainage has been submitted to and approved in writing by the Local Planning Authority. This scheme shall be indicated on a drainage plan and shall conform with the non-statutory technical standards for SuDS (Defra, 2015) and the drainage strategy submitted with the application (Reports4Planning, 5926-B, Jan 2023). Detailed design drawings for the various SuDS elements, including but not limited to the permeable paving,

swale, attenuation basin and storage tank, shall be included. Calculations shall be submitted that demonstrate that the surface water drainage scheme is sized to ensure that discharge from the entire site is limited to 5l/s for events up to the 1 in 100 year event plus a 40% allowance for climate change. Evidence shall be submitted of the suitability of the piped drainage asset to accept the proposed additional discharge.

The scheme should include run off treatment proposals for surface water drainage. Where the scheme includes communal surface water drainage assets proposals for dealing with the future maintenance of these assets should be included. The scheme should include proposals for informing future home owners or occupiers of the arrangements for maintenance of communal surface water drainage assets. The drainage scheme shall be implemented prior to the first use of the development and thereafter maintained.

12. Foul and surface water shall always be drained on separate systems for the life of the development.
13. No dwelling hereby approved shall be occupied until each has been fitted with an electric vehicle charging point. The charging points shall comply with BS EN 62196 and the Worcestershire County Council Streetscape Design Guide. The electric vehicle charging points shall be retained for the lifetime of the development unless they need to be replaced in which case the replacement charging point(s) shall be of the same specification or a higher specification in terms of charging performance.
14. Prior to the first occupation of any dwelling hereby approved, sheltered and secure parking for cycles to comply with the Council's adopted highway design guide shall be provided in accordance with details which shall first be submitted to and approved in writing by the Local Planning Authority and these facilities shall thereafter be retained for the parking of cycles only.
15. The development hereby approved shall not be occupied until the applicant has first submitted to and had approved in writing from the Local Planning Authority, a residential Travel Welcome Pack promoting sustainable forms of access to the development. The pack shall be provided to each resident at the point of occupation.
16. Prior to the first occupation of the development hereby approved, a schedule of landscape maintenance for a minimum period of 20 years shall be submitted to and approved in writing by the Local Planning Authority. The schedule shall include details of the arrangements for its implementation, long-term design objectives, management responsibilities and maintenance schedules for all landscaped areas (excluding domestic gardens). Thereafter, the approved landscape maintenance schedule shall be fully implemented.
17. The Development hereby approved shall not be brought into use until the vehicular access onto Low Road has been provided in accordance with detailed plans to be submitted to and approved in writing by the local planning authority. The submitted plans shall be based on submitted Drawing No. 2021 / 032 / 001.

18. The Development hereby approved shall not be brought into use until visibility splays are provided from a vertical point 1.05m above carriageway level at the centre of the application site and 2.4m back from the near side edge of the adjoining carriageway, (measured perpendicularly), for a distance of 59m in each direction measured along the nearside edge of the adjoining carriageway (vertical off set of 0.6m). 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. Prior to the commencement of the development hereby approved, details of the levels of the existing site and the precise floor slab levels of the approved dwellings, relative to the boundary of the site, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall be undertaken in accordance with the approved levels.
20. Any reserved matters application relating to appearance shall be accompanied by details of the materials to be used in the construction of the external surfaces of any building. Thereafter, the development shall be undertaken in accordance with the approved details.
21. Prior to the commencement of the development hereby approved, details of the facilities for the storage of refuse for all proposed dwellings hereby approved, shall be submitted to and approved in writing by the Local Planning Authority. No individual dwelling shall be occupied until refuse storage facilities to serve that dwelling have been constructed in accordance with the approved details. The facilities shall thereafter be retained.
22. Prior to the occupation of any dwellinghouse hereby approved, details of renewable or low carbon energy generating facilities to be incorporated as part of the development shall be submitted to and approved in writing by the Local Planning Authority. The details shall demonstrate that at least 10% of the predicted energy requirements of the development will be met through the use of renewable/low carbon energy generating facilities. The approved facilities shall be provided prior to any part of the development hereby permitted being first occupied.
23. The development hereby approved shall be undertaken in accordance with the 'Tree Protection', 'Ground Protection' and 'Mitigation and Compensation' measures set out within Section 4 of the submitted Reports4Planning 'Tree Survey', at all times.