
Appeal Decision

Site visit made on 15 January 2025

by **S Rawle BA (Hons) Dip TP Solicitor**

an Inspector appointed by the Secretary of State

Decision date: 11 March 2025

Appeal Ref: APP/J1860/W/24/3347063

Land at (OS 7752 4912), Upper Interfields, Malvern

- 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 Mr B Greenaway of Greenaway Planning Ltd against Malvern Hills District Council.
 - The application Ref is M/23/00900/OUT.
 - The development proposed is for the erection of 9 dwellings, (6 Open Market and 3 Self or Custom Build Homes) with associated access, SuDS infrastructure and landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of development included on the application form contained matters that are not acts of development and consequently I have removed these from the description set out above. Further, the site address on the application form is different from that included on the appeal form. As I am satisfied that the latter provides a more accurate location, I have used it as the address set out above, although it is unnecessary to repeat the grid references as they are included in brackets above.
3. Moreover, as outlined above, the Council failed to give notice of their decision on the application within the prescribed period, however in their appeal statement they set out the reasons they would have given for refusing the application if they had made a decision. I have used these reasons to form the basis of the main issues.
4. The planning application was submitted in outline with all matters except access reserved for future consideration. I have assessed the proposal on this basis and with the exception of the access drawings I have treated all other drawings as illustrative.
5. I have had regard to the updated National Planning Policy Framework (the Framework) which has been recently published. I note that national policies relating to housing land supply have changed and consequently it has been necessary to consult the parties on these changes and I have taken account of their comments on the updated Framework in the determination of the appeal.
6. As will become apparent, one of the main issues I have identified is whether or not adequate provision has been made for affordable housing. The appellant sets out

that provision for two affordable houses will be included in the s106 agreement, However, the description of development made it clear that the proposal was for 6 Open Market and 3 Self or Custom Build Homes. The introduction of affordable housing at this stage would in my view involve a fundamental change to the application. Moreover, such a change could cause unfairness to those who may have wanted to comment on the inclusion of affordable housing as an integral part of the proposal and therefore it would not be appropriate for me to accept such a change. Consequently, I have determined this appeal on the basis that none of the proposed dwellings would be for affordable housing.

Main Issues

7. The main issues are:

- Whether or not the site is an appropriate location for the proposed development having regard to the settlement strategy, the impact of the proposal on the character and appearance of the area and the efficient use of the appeal site taking account of development plan policies relating to development within an area designated as a Significant Gap;
- Whether or not adequate provision has been made for affordable housing and any necessary health contributions; and
- Whether or not the proposal would result in an unacceptable impact on highway safety.

Reasons

Whether or not an appropriate location, character and appearance, efficient use of land

8. The appeal site comprises an area of open land currently in agricultural use. Part of the site is adjacent to Leigh Sinton Road (B4503) and part of the site is set behind an existing row of houses. The southern boundary is bounded by Grit Lane which has housing on the other side of the road and to the south-east on higher ground there is mature vegetation which provides a verdant backdrop. To the north-east beyond a public footpath is an area that is planted with trees. Access to the appeal site is gained from Leigh Sinton Road by an existing track via a service road that also serves the row of houses and an existing farm.
9. The character and appearance of the area derives to a significant extent from its green openness which creates a sense of spaciousness behind the short row of houses. This sense of green spaciousness provides an important transition from the residential development on the other side of Grit Lane and from the row of houses along Leigh Sinton Road to the more open areas of agricultural land. This sense of spaciousness makes a significant contribution to the character and appearance of the area.
10. The appeal site falls outside but near to the boundary of the Malvern Hills National Landscape (MHNL) within a character area described as a principal timbered farmland. Among other things, the Malvern Hills AONB Environs – Landscape and Visual Sensitivity Study May 2019 describes the area in which the appeal site is located as being well defined and maintained small to medium scale farmed landscape with public rights of way running through the area. The appeal site is consistent with that description.

11. The proposal would involve the introduction of 9 dwellings. At this stage, the plans showing the layout are illustrative, but they do show that a scheme could be delivered that includes significant areas of green space, play areas and nature areas as well as open areas of garden around the dwellings.
12. The appeal site comprises part of a Significant Gap. Policy SWDP 2 of the South Worcestershire Development Plan adopted February 2016 (SWDP) sets out the development strategy and settlement hierarchy and among other things highlights that development proposals should ensure the retention of the open character of the Significant Gaps.
13. The explanatory text explains that the purpose of maintaining these gaps is to provide additional protection to open land that may be subject to development pressures and to help maintain the clear separation between smaller settlements and urban areas in order to retain their individual identity. Given the location of the appeal site in comparison to the open nature of its surroundings, especially to the north and north-east the appeal site makes an important contribution to maintaining the gap between Malvern and Leigh Sinton.
14. The proposal does not meet any of the suggested acceptable types of development set out in Policy SWDP 2. As a result, the relevant development plan policy does not support the introduction of the proposed development at the appeal site.
15. However, the conflict with this particular development plan policy is moderated by the fact that, as set out above, a scheme could be brought forward at the reserved matters stage that would ensure that a significant part of the site would remain open. However, that would also mean that the proposal would not make the most effective use of land which needs to be balanced against the fact that a less dense proposal would retain a certain amount of openness.
16. Nevertheless, wherever the dwellings are located on the site, the introduction of nine dwellings, the associated works and domestic paraphernalia would result in an urbanising impact which would diminish openness and the existing sense of spaciousness. This would unacceptably harm the character and appearance of the area. However, given that the proposal would retain a certain amount of openness, the proposal would not unacceptably harm the setting of the MHNL.
17. I note that the appeal site is located just outside the Malvern development boundary. The nearest bus-stop is just under 600 metres away and the nearest schools and shops are between 1-1.5km. As outlined below, I also accept that the proposal would lead to improvements to the pedestrian footpath network. However, bearing in mind the distance from the appeal site to the nearest services and facilities, I am not satisfied that the proposal would minimise the demand for travel. I accept that cycling to these services and facilities could be a possibility, but would not be a particularly attractive proposition, particularly in adverse weather and during the hours of darkness. Consequently, in my view it is highly likely that the majority of trips to access such services and facilities would be undertaken by private car.
18. So overall, the proposal would diminish the open and spacious character of the appeal site as it would introduce dwellings and associated development which would have an urbanising impact. However, depending on the ultimate layout brought forward at the reserved matters stage, it could retain significant open and

green areas, but this would be at the expense of the efficient use of the land. Moreover, the site is not particularly well located to services and facilities and to public transport links. So, on balance, when weighing all these factors, I consider that the harm caused would be moderate.

19. I therefore conclude that the appeal site would not be an appropriate location for the proposed development having regard to the settlement strategy. Further the proposal would unacceptably harm the character and appearance of the area and would not result in the efficient use of the appeal site. Consequently, the proposed development would conflict with Policies SWDP 2, SWDP 13, SWDP 21 and SWDP 25 of the SWDP which among other things seek to safeguard the open countryside, retain the open character of Significant Gaps, make efficient use of land and complement the character of the area, including its landscape setting. However, for the reasons set out above, the harm is moderated to a certain extent and consequently I afford this issue moderate weight in the determination of the appeal.

Affordable housing and health

20. As set out above, I have determined the appeal on the basis that no affordable housing would be provided. The appellant accepts that as the appeal site exceeds one hectare it meets the definition of major development as set out in the Framework and consequently affordable housing should be provided. No affordable housing would be provided. In any event, even if I had accepted that affordable housing was proposed as part of the proposal, the appellant had suggested that this requirement would be included within a planning obligation. However, no executed planning obligation has been provided and I afford the draft obligation no weight in the determination of the appeal. It follows that adequate provision has not been made for affordable housing.
21. In relation to the health contribution, although the appellant has expressed some reservations ultimately, they accept that to ensure conformity with the request from the Herefordshire and Worcestershire Integrated Care Board (ICB) a contribution of £4800 would be included within a planning obligation. Having considered the available evidence, I consider the contribution is necessary to make the development acceptable in planning terms, directly relates to the proposed development and is fairly and reasonably related in scale and kind to the proposed development. However, no executed planning obligation has been provided and I do not consider that it would be appropriate to address this contribution by imposing a condition. It follows that adequate provision has not been made for a health contribution.
22. I therefore conclude that adequate provision has not been made for affordable housing or any necessary health contributions. Consequently, the proposal conflicts with Policy SWDP 15 which seeks to ensure development meets affordable housing needs and in relation to the health contribution, national planning policy as set out in Planning Practice Guidance – Planning Obligations. I afford the lack of provision of these matters significant weight in the determination of the appeal.

Highway Safety

23. As outlined above, the appeal site is located just outside the development boundary of Malvern. I have dealt with sustainability issues above. In terms of

highway safety, the starting point is that the Framework is clear that development should only be refused on highway safety grounds if there would be an impact on highway safety, or the residual cumulative impacts on the road network following mitigation, would be severe. That is not the case here.

24. I am satisfied that the proposed pedestrian link which would provide a new 235m footway adjacent to Leigh Sinton Road which would connect to the existing footway at Birchwood Road would provide safe and convenient pedestrian access for future occupiers and the existing residents of dwellings in the vicinity of the appeal site. Moreover, I am satisfied that the proposed clearance of vegetation at the Grit Lane junction with Leigh Sinton Road would create satisfactory visibility to ensure the safety of pedestrians using the proposed footway.
25. There is an existing service road adjacent to Leigh Sinton Road which currently serves the existing farm and the row of residential properties to the north and north-west of the appeal site. The appeal site is accessed from an existing track that joins the northern part of the service road.
26. I accept the evidence provided by the appellant on the likely traffic generated by the proposed development based on their TRICs analysis which would result in about 41 movements over a typical 12-hour period. Based on this level of traffic generation I am satisfied that there would not be any harmful residual cumulative impacts on the road network.
27. I have taken account of the swept path analysis. Access for vehicles travelling both north and south along Leigh Sinton Road is possible from both the northern and southern arms of the service road. The southern arm would provide a satisfactory arrangement for vehicles entering and exiting the appeal site. Similarly, vehicles intending to travel north could do so safely. Given the existing road layout I agree with the appellant that it is unlikely that vehicles intending to travel south would do so via the northern arm of the service road but note that if they did, they could potentially cross the centre line. However, I accept the appellant's suggestion that a "no left-turn" sign could be installed at the northern arm of the service road to prevent such a manoeuvre. Consequently, I am satisfied that vehicles would be able to enter and exit the site safely.
28. I accept that the proposed works would require works within the existing highway and on land not controlled by the appellant. However, I am satisfied that if in all other respects this proposal had been acceptable, suitably worded conditions could have been imposed to ensure that the necessary highways works were undertaken.
29. I therefore conclude that the proposal would not result in an unacceptable impact on highway safety. Consequently, the proposed development would accord with Policies SWDP 4 and SWDP 21 of the SWDP which among other things seek to ensure new development manages travel demand, maximises opportunities for pedestrian linkages, that vehicular traffic should be able to access the highway safely and the road network should have adequate capacity to accommodate the volume of traffic generated.

Other Matters

30. In relation to housing supply, the Council has recently recalculated the housing land supply situation taking account of the updated Framework and the need to take account of the 'standard method'.
31. Based on these figures, the Council only have a housing land supply figure of 2.06 years which is significantly below Government's expectations. However, although the proposal would undoubtedly be valuable in boosting housing stock in circumstances where there is an existing significant shortfall, given that it would only result in the addition of nine dwellings that tempers its weight to a certain extent.
32. I accept that the proposal would have a cumulative effect on the supply of housing and would have some economic, social and environmental benefits. For example, it would provide some jobs and create demand for materials during the construction phase, would broaden the availability of housing in the area and once occupied would support services and local facilities. I also accept that the proposal would provide an improved pedestrian link that would benefit existing residents.
33. Further, I note that the proposal includes three self-build or custom-build homes in an area where there is demand for such development. The Council has a duty under the Self Build and Custom Housebuilding Act 2015 (as amended by the Housing and Planning Act 2016) to keep a register of persons who are interested in acquiring a self-build or custom-build plot, and to also grant enough suitable development permissions for serviced plots to meet identified demand for the district.
34. The Framework supports sites to come forward for self-build and custom-build housing. The addition of such dwellings on the appeal site would help to meet the demand for such housing in the area.
35. However, although the appellant has indicated that a planning obligation would include provision of this self-build and custom-build housing, no executed obligation is before me. Moreover, as monitoring and enforcing a condition would be extremely difficult, a planning obligation would be necessary. As no executed obligation has been provided to secure the three proposed dwellings as self-build or custom-build homes this significantly reduces the weight afforded to this matter.
36. On that basis, taking account of the contribution the appeal scheme would make in addressing the housing land supply shortfall and other matters that weigh in favour of the proposal, I afford the totality of the benefits moderate weight.
37. In reaching that view I have taken account of the previous appeal at Halfkey Road, Malvern¹. I note that in that case, the Inspector set out that as only nine dwellings were proposed, as here, the benefit was limited when weighing the merits of the scheme and ultimately, she gave significant weight to the limited benefit the development would make to addressing the housing shortfall. However, she also only gave limited weight to the harm the proposal would have on the character and appearance of the area.
38. Although that site is quite close to the appeal site, the context is materially different as in that case there are many more houses adjacent to the appeal site, including

¹ APP/J1860/W/24/3351310

a cul-de-sac of newly built dwellings. She also did not find any conflict in relation to the provision of affordable housing, or health contributions. As result, the weight given to the benefits of that proposal relative to the harm were significantly different from the case before me and consequently I afford it limited weight in the determination of the appeal.

39. Similarly, I have also taken account of the previous appeal at The Homestead, Lower Broadheath² which was for permission in principle for up to four dwellings. However, in that case the Inspector did not find that there was any harm to the character and appearance of the area as that was to be considered at the subsequent Technical Details Consent stage and the Inspector found that the proposed development would relate well to existing dwellings in the village and that proposal involved a materially different scale of development. So again, the weight given to the benefits of that proposal relative to the harm were significantly different from the case before me and consequently I afford it limited weight in the determination of the appeal.
40. I have also taken account of the other appeal decisions that were included as appendices to the planning statement. Three of these dealt with the provision of self-build housing.³ However, unlike here, the Inspectors in those other cases were satisfied that an appropriate mechanism was in place to secure the dwellings as self-build and consequently these other cases are materially different, particularly in regard to the weight given to the provision of self-build homes. In relation to Land at Leigh Sinton Fields⁴, again this case is materially different from the case before me as in that case, the Inspector found that the proposal would not harm the character and appearance of the area, and any other harm was limited. So once again, the weight given to the benefits of that proposal relative to the harm were significantly different from the case before me and consequently I afford it limited weight in the determination of the appeal.
41. Finally, I am aware that the appeal site is located relatively near to Grit Farmhouse and its outbuildings which are Grade II Listed. Mindful of the statutory duty set out in s66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, I have paid special regard to the desirability of preserving their setting. The historic built context and the association of these buildings with farming positively contributes to their significance. Nevertheless, given the location and extent of the proposed development, the separation distance and the intervening vegetation, the proposal would preserve the setting of these listed buildings and the contribution that setting makes to their significance. I note the Council has no concerns in this regard either. Consequently, this matter is a neutral factor in the determination of the appeal.

Planning Balance

42. I have afforded some matters weight as outlined above and overall, I afford the totality of the benefits moderate weight in the determination of the appeal. On the other hand, I have found that the appeal site would not be an appropriate location for the proposed development having regard to the settlement strategy, the proposal would unacceptably harm the character and appearance of the area, the proposed development would not result in the efficient use of the appeal site and

² APP/J1860/W/23/3332645

³ APP/J1860/W/22/3300983, APP/H1840/W/20/3255350 & APP/H1840/W/19/3241879

⁴ APP/J1860/W/21/3289643

that adequate provision has not been made for affordable housing or any necessary health contributions. I afford the harm associated with these matters moderate and significant weight respectively. Therefore, I accord the totality of harm substantial weight in the determination of the appeal.

43. As set out above, the Council cannot demonstrate a five-year housing land supply. As a result, Paragraph 11(d) of the Framework is engaged. However, for the reasons set out above, the adverse impacts of granting permission for the proposal would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole.
44. In reaching that view I have taken account of the fact that the Framework has recently been updated and as a result I have had particular regard to key policies including that the Framework supports directing development to sustainable locations, making effective use of land, securing well designed places and providing affordable homes, individually or in combination.
45. However, the updated Framework does not alter my findings. That is because although I acknowledge the proposed development supports the Government's objective of boosting the supply of housing and I have taken account of the contribution the proposal would have towards that goal. However, I have nevertheless found that overall, the harm associated with the proposal would significantly and demonstrably outweigh the benefits.
46. Consequently, the scheme would not represent sustainable development within the meaning of paragraph 11(d) of the Framework and this weighs substantially against the scheme.

Conclusion

47. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Consequently, the appeal should be dismissed.

S Rawle

INSPECTOR