
Appeal Decision

Site visit made on 18 February 2025

by Tamsin Law BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 June 2025

Appeal Ref: APP/J1860/W/24/3353399

Highbrae, Mamble Road, Clows Top DY14 9HX

- 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 planning permission.
- The appeal is made by Stone Heath Homes Ltd against Malvern Hills District Council.
- The application Ref is 21/01930/FUL.
- The development proposed is proposed residential development of 17no. dwellings with new access.

Decision

1. The appeal is dismissed.

Preliminary Matters and Main Issue

2. Although the appeal has been made against the failure of the Council to issue a decision on the application within the prescribed time period, the Council has indicated in its appeal submissions that, had it been in a position to do so, it would have granted planning permission for the proposed development, subject to a planning obligation securing affordable housing, the management of open space and financial contributions towards off-site affordable housing, health care, and infrastructure. The appellant has not disputed the need for the contributions.
3. I have received two unilateral undertakings (UU) from the appellant, the second supersedes the first UU. The Council have raised concerns regarding the execution and content of the UU.
4. In light of this, the main issue is the effectiveness of the planning obligation.

Reasons

5. The submitted UU aims to secure financial contributions towards meeting the need for additional facilities and services arising from the development. The UU securing affordable housing, the management of open space and financial contributions towards off-site affordable housing, health care, and infrastructure are in line with the Council's policies. The Council has justified the various sums. I consider that the measures in the UU are necessary, related directly to the development and fairly related in scale and kind. As such they would accord with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the tests for planning obligations set out in the National Planning Policy Framework (the Framework).
6. However, I have some concerns about the document itself, its execution and thus whether the Council could rely on it to secure the contributions.

7. The UU includes a schedule of financial contributions, all of which are to be payable prior to the commencement of development. Commencement of development is appropriately defined within the definition section of the UU. I am therefore satisfied that the financial contributions could be secured appropriately, subject to proper execution of the UU.
8. The UU includes a number of definitions that are pertinent to the provision of the various obligations. However, whilst affordable housing dwellings and affordable housing scheme is listed, there is no associated definition. Additionally, the Second Schedule, Part 2, section 2 makes reference to the provision of “2 intermediate housing products” where there is no reference to this in the definitions or elsewhere in the UU.
9. Whilst there are definitions regarding the eligibility for the First Homes to be provided, there is no definition for the eligibility to occupy the affordable housing. I note that the Fourth Schedule, Part A, section 9, states “not to allow the affordable housing dwellings to be occupied otherwise than by a person who at the date of his first Occupation is a Qualifying Resident...” In the absence of a definition of either the eligibility for occupation or a qualifying resident, I cannot be certain that the obligation would provide housing for those in need.
10. For these reasons the planning obligation would not be effective in securing affordable housing and the development would not accord with policy SWDP15 of the South Worcestershire Development Plan (2016) (SWDP) which require this provision.
11. Second Schedule, Part 2, section 3 refers to the transfer of public open space. The UU stated that the land will be transferred but does not state who or what this is. There is no definition of public open space within the UU, albeit it makes reference to the description of public open space within the planning application. There is no information regarding when the public open space should be provided, completed or transferred. In the absence of this information being detailed within the UU I am not confident that the public open space would be provided, transferred appropriately or maintained.
12. For these reasons the planning obligation would not be effective in public open space and the development would not accord with SWDP policies SWDP 7, SWD21, and SWDP39 which require this provision.
13. The Council are concerned that there is insufficient evidence to confirm the correct landowner has been party to the UU. The planning obligation must give details of each person’s title to the land. The First Schedule of the UU sets out a description of the site and makes reference to a conveyance dated 24 July 1980. No title has been submitted and I have not been provided with an entry from the land registry. In the absence of this information, I cannot be confident that the correct landowners have been party to the UU.
14. For this reason, I am not convinced that the planning obligation has been executed appropriately.
15. In addition to the missing definitions above, reference is made in the document to a number of phrases, including Registered Provider, General Market Dwellings, Social Rent Unit, Actively Marketed. No further details of such phrases have been provided within the document. Thus, there is no certainty over what the UU is

seeking to deliver. Additionally, there are references to sections of the UU which do not exist, such as Fourth Schedule, Part B, section 1.3 references paragraph 8, where no paragraph 8 is provided. This does not provide me with the confidence needed to conclude that the UU has been properly drafted and would be enforceable.

16. The obligations would be necessary to make the development acceptable, but for the reasons given they would not be effectively secured. I cannot therefore give any material weight to the UU in my decision.

Planning Balance

17. The Council cannot demonstrate a five-year supply of housing, as such I am taken to paragraph 11 (d) of the Framework.
18. The provision of 17 dwellings would contribute to the housing supply. There would be economic benefit through the employment provided by construction and demand for supplies and materials. There would also be social benefit from the provision of new housing. The development would have good accessibility to local shops and facilities.
19. For the reasons given above, I have concerns regarding the effectiveness of the UU in delivering affordable housing and the infrastructure improvements and cannot give material weight in favour of these provisions as a benefit.
20. In the absence of an appropriate UU, the proposal does not accord with the development plan as a whole. The lack of a five-year housing land supply means that the policies which are most important for my decision are deemed to be out-of-date.

Conclusion

21. For the reasons given, I conclude that the appeal should be dismissed.

Tamsin Law

INSPECTOR

