



Appeal Decision

Site visit made on 23 June 2025

by **S Burch BSc MSc MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23RD July 2025

Appeal Ref: APP/J1860/W/25/3361704

Oak Cottage, Jennett Tree Lane, Callow End, Worcester, WR2 4UB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 (as amended) for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Jon Turton against the decision of Malvern Hills District Council.
 - The application Ref is M/24/01509/CU.
 - The application sought planning permission for the change of use of an existing outbuilding to short stay holiday accommodation without complying with conditions attached to planning permission Ref: 19/0818/CU, dated 27th February 2020.
 - The conditions in dispute are Nos 4 and 5 which state that:
 - *'4. The holiday let unit/visitor accommodation hereby approved shall be occupied for holiday purposes only and shall not be occupied as a person or persons' sole, or main place of residence.'*
 - *'5. The owners/operators of the holiday let unit/visitor accommodation hereby approved shall maintain an up-to-date register of the names of all owners/occupiers of the unit/accommodation. This register shall be made available within 1 calendar month of a written request by the Local Planning Authority.'*
 - The reasons given for the conditions are:
 - *4. 'The proposed unit/visitor accommodation would be situated in the open countryside, outside any defined settlement boundary where new residential development will be strictly controlled. The proposed unit/accommodation is only acceptable as a holiday let/ tourism development in accordance with policy SWDP35 of the South Worcestershire Development Plan. To grant permission without such a condition would be contrary to policy SWDP2 of the South Worcestershire Development Plan.'*
 - *5. 'The proposed unit/visitor accommodation would be situated in the open countryside, outside any defined settlement boundary where new residential development will be strictly controlled. The proposed unit/accommodation is only acceptable as a holiday let/ tourism development in accordance with policy SWDP35 of the South Worcestershire Development Plan. To grant permission without such a condition would be contrary to policy SWDP2 of the South Worcestershire Development Plan.'*
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The original planning permission showed a rectangular shaped building with a single bedroom. It is noted that amended plans which show a different layout including an additional bedroom, solar panels and landscaping are included within the appellants statement of case. From what I could see on my site visit, a number of these amendments appear to have been constructed. Nonetheless, it is my view that cumulatively, these amendments would constitute a substantial difference to the plans originally submitted. The appeal must be determined based on the plans as originally submitted to the Council and upon which it based its decision, and which have been subject to consultation. To do otherwise would prejudice the

interests of the Council, interested third parties and consultees, who have not been consulted on the revised scheme and who may have observations to make. I have therefore proceeded to determine the appeal based on the plans as originally submitted.

3. The second reason for refusal concerned the lack of a financial contribution to affordable housing. A unilateral undertaking has been provided at appeal stage to seek to address this matter and I will consider this matter later.

Background and Main Issues

4. Planning permission was granted for the change of use of an outbuilding to short stay holiday accommodation under planning application reference: 19/0818/CU. Condition 4 requires the accommodation to only be used for holiday purposes. Condition 5 requires the owners/operators of the accommodation to maintain the up-to-date register of the names of all owners/occupiers of the accommodation. In essence, the appellant is seeking a planning permission without compliance with the conditions listed above and removal of these conditions would effectively result in the provision of an open market unit of accommodation.
5. The main issues are whether the conditions are reasonable and necessary, having regard to whether the appeal proposal would accord with the development plan strategy for housing and would be in a sustainable location.

Reasons

6. The appeal site comprises holiday let accommodation, situated up a lane some distance back from Jennett Tree Lane. The site is located in the countryside, with open grazing land to two sides. While there is a large dwelling house on the opposite side of the lane leading to the appeal site, the character of the surrounding area is rural and tranquil.
7. Without conditions 4 and 5, the scheme would essentially result in the creation of a dwelling in the open countryside. It is therefore appropriate to consider the scheme in the light of the planning policies which address the provision of new housing in such locations. Policy SWDP2 of the South Worcestershire Development Plan (SWDP) explains that in the open countryside, development will be strictly controlled, subject to a number of exceptions. It is accepted by the appellant that the appeal scheme does not fall within any of the listed exceptions, and I agree. The appeal site is therefore not in a location in which new housing development is supported by the development plan.
8. Policy SWDP4 of the SWDP requires development to, amongst other things, minimise the demand for travel and offer genuinely sustainable travel choices. The appellant suggests that as the acceptability of the holiday lodge site was confirmed by the previously approved scheme (Ref:19/01818/CU), the site is therefore considered to be in a sustainable location. However, it is evident that this scheme was largely assessed and approved against Policy SWDP35 which allows for visitor accommodation outside development boundaries in a number of circumstances.
9. Furthermore, the evidence outlines how the nearest village centre at Callow End is in excess of 1.4 kilometres (km) away from the appeal site, with access via the C2103/B4424. Future occupiers would have to walk or cycle for a reasonable

distance along Jennett Tree Lane before reaching the B4424. However, Jennett Tree Lane does not benefit from any meaningful extent of footways, is narrow in places and does not benefit from street lighting. The journey would therefore be unappealing to those walking or cycling, particularly during the hours of darkness and winter months and to those who are less confident cyclists.

10. A number of public footpaths provide access from the site to Callow End, however it appears that these paths cross over fields. I have not been provided with information that satisfies me that these footpaths would be accessible and safe for walking and cycling on a regular basis to access services and facilities other than on an occasional and informal basis. Furthermore, given they are through fields, it is likely that the journey would be unappealing during hours of darkness and winter months.
11. Malvern Link is situated over 8km away from the appeal site, via several differing routes. However, this would be a very unlikely distance to walk on a regular basis. This is especially the case as a number of the public footpaths are over fields and are therefore not suitable and potentially unsafe for walking or cycling including during the hours of darkness and winter months.
12. The medical centre is situated about three miles from the site, however as outlined previously, Jennett Tree Lane does not benefit from a footpath and is also unlit. The appellant has not provided details of the location of, or the route to the medical centre, however given the above, it is likely that this journey would be unappealing and potentially unsafe to those walking and cycling, particularly those who are novice or inexperienced cyclists.
13. In terms of options for public transport for permanent residents of the unit, the nearest bus stop is situated 1km from the site at Wheatfield Park, on Upton Road. There is also another stop nearby at Blue Bell, also on Upton Road. However, reaching these bus stops would require occupiers to walk along Jennett Tree Lane for a fairly considerable distance, which as outlined previously does not benefit from footways or street lighting. This would likely discourage occupiers from walking to the bus stop, particularly during hours of darkness and winter months. Whilst the evidence outlines how these stops provide services to Ryall and Worcester, I have few details of the frequency of such services. I am therefore not satisfied that this would provide a reasonable alternative to travel by private car. As a result of the above, the future occupants would be highly dependent on the use of private cars for their day-to-day needs. This would be contrary to the development plan approach for the location of development.
14. With this dependence on the private vehicle to access services and facilities, the scheme would be contrary to the National Planning Policy Framework (the Framework) requirement to promote sustainable transport. The policy advice is that the planning system should actively manage patterns of growth in support of sustainable transport objectives, including identifying and pursuing opportunities to promote walking, cycling and public transport use.
15. It is stated that the use of the private car by permanent residents, when compared against holiday makers coming significant distances for a short break, is likely to result in fewer miles being driven in a given timescale and fewer car journeys. However, once staying at the site, those on holiday would have a different pattern of movements to permanent residents who would likely make more regular trips

per day for driving to employment sites, school runs and drives to shops and services. In any instance, even if the above was the case, the policy requires development to offer genuinely sustainable travel choices, and the location of this unit of accommodation in permanent occupation would not achieve this requirement.

16. The appeal proposal would have the effect of permitting a permanent dwelling in the open countryside, in a location with relatively poor access to everyday shops, facilities and other services. It would be contrary to Policies SWDP1, SWDP2 and SWDP4 of the SWDP. Collectively, amongst other things, these policies seek to safeguard the open countryside and ensure that development offers sustainable travel choices. Consequently, it is reasonable and necessary to retain the conditions limiting occupation to that of holiday accommodation for the reasons explained as to expand the accommodation to permanent residents would not comply with the approach to the location of housing and the site would not be in a sustainable location for such a use.

Other Matters

17. Notwithstanding the above, Policy SWDP15 of the SWDP requires new housing development to contribute to the provision of affordable housing. On sites of less than 5 dwellings in designated rural areas a financial contribution towards affordable housing provision should be made based on the cost of providing the equivalent in value of 20% of the units as affordable housing on site. The evidence before me explains that Callow End is a designated rural area, and therefore the scheme should attract the requirement for an affordable housing contribution.
18. The appeal has been accompanied by a signed Unilateral Undertaking pursuant to Section 106 of the Town and Country Planning Act 1990 (as amended) (UU). The UU relates to the provision of an off-site affordable housing contribution of £8,650 on the date of grant of the planning permission and the commencement of development.
19. The Council have not provided any comments relating to the submitted UU. Nevertheless, it appears that the appropriate level of financial contribution would be provided, and I note that the Council have not disputed the figure. The UU however references the wrong planning appeal number, but as the planning application is correctly referenced, it is probable that this error may not be fatal to the agreement. In any case, I am dismissing the appeal, so this issue is not determinative. I have treated the UU as meeting the related affordable housing policy requirements and addressing the second reason for refusal. It follows that the UU would meet with the tests for planning obligations as set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010. However, given the level of contribution, while worthwhile and necessary, I attribute it limited weight as a benefit in favour of approval.
20. The appellant sets out that that scheme would create economic uplift during the development phase for local trades people. However, given the accommodation is already in place and this scheme seeks to remove conditions relating to occupancy, how the scheme would achieve this is unclear. It is also unclear how the scheme would ensure environmental enhancement measures given the unit is in place and the scheme simply seeks to change the occupancy type.

21. It is stated that the scheme would fulfil the needs of groups with specific housing requirements. However, no further details of what these requirements are, or how the scheme would fulfil them have been provided. As such, I have afforded this argument limited weight in favour of the scheme.
22. No details of permitted development rights which would allow for the conversion of the building into dwelling have been provided. There is also no evidence before me to suggest that a lawful development certificate has been applied for. Given the above, I have afforded this information limited weight in favour of the appeal.
23. Whilst I acknowledge that the appellants wish to reside in the property on a permanent basis to be closer to family and friends, this consideration is a personal matter and is of limited weight in favour of the appeal.
24. In terms of other factors, the appeal site is not located in an area of high flood risk. There would be no greater impact on biodiversity, geodiversity or drainage in comparison to the existing situation. The scheme would not amend access or parking arrangements or the design of the property. Waste storage would be provided as per the existing situation. There would likely be no significant impact on the living conditions of neighbouring occupiers. However, these are considered to be neutral factors and would not weigh in favour of, nor against, the appeal.

Planning Balance

25. The Council outlines how it can only demonstrate a 3.7 year housing land supply. The appellant explains in their statement of case that the Council can only demonstrate a 2.65 year housing land supply. Whilst the main parties do not agree on the figures, both levels equate to a significant shortfall. In these circumstances paragraph 11d) of the Framework is engaged. There is nothing before me to suggest that there are any policies in the Framework that protect areas or assets of particular importance that would provide a strong reason for refusing the development under paragraph 11d)(i).
26. Therefore, the balance in paragraph 11d(ii) should apply such that planning 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 taken as a whole, having particular regard to specified key policies.
27. The Framework seeks to direct development towards locations with good access to services and facilities and ensure that sustainable transport modes are prioritised. It can be seen from my findings above that the appeal proposal would fall short in these respects and would conflict with Policies SWDP1, SWDP2 and SWDP4 of the SWDP. As these policies are generally consistent with the relevant aims of the Framework, I attach substantial weight to the schemes conflict with these policies.
28. The removal of the conditions would allow the accommodation to be offered as permanent residential accommodation and therefore improve the current shortfall in the Council's housing land supply. It would reflect a small but beneficial contribution to the choice of homes within the area and would incorporate energy efficiency measures such as high levels of insulation and use of energy efficient domestic appliances. The dwelling would be delivered relatively fast, as it is already built, and may be a somewhat environmentally efficient way of a providing

a new dwelling given the building already exists. It would ensure a contribution to off-site affordable housing provision. There would be ongoing economic benefits arising from the permanent occupation of the development, however this would also be the case with its use as a holiday let. Nonetheless, whilst these are worthwhile benefits, given the modest scale of the development I attribute limited weight to them.

29. Accordingly, basing my assessment on a worst case scenario, ie. a 2.65 year housing land supply, I find that the adverse impacts arising from the development would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The presumption in favour of sustainable development does not apply in these circumstances.

Conclusion

30. The scheme would conflict with the development plan when considered as a whole and the material considerations, including the Framework, do not indicate that the appeal should be decided other than in accordance with it. For these reasons, I conclude that the conditions are reasonable and necessary with regard to the development plan strategy for the location housing.
31. For the reasons given, the appeal should be dismissed.

S Burch

INSPECTOR