

---

## Appeal Decision

Site visit made on 3 May 2016

**by Jonathan Bore MRTPI**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 09 May 2016**

---

**Appeal Ref: APP/J1860/W/16/3144810**

**Land to the west of Apostles Oak Cottage, Abberley WR6 6AD**

- 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 D Mackay against the decision of Malvern Hills District Council.
  - The application Ref 14/01122/OUT, dated 8 August 2014, was refused by notice dated 18 August 2015.
  - The development proposed is a residential development of up to 25 dwellings, including 10 affordable units, with public open space, a vehicular and pedestrian access point and associated landscaping.
- 

### Decision

1. The appeal is allowed and planning permission is granted for a residential development of up to 25 dwellings, including 10 affordable units, with public open space, a vehicular and pedestrian access point and associated landscaping on land to the west of Apostles Oak Cottage, Abberley WR6 6AD, in accordance with the terms of the application, Ref 14/01122/OUT, dated 8 August 2014, and the submitted site plan, subject to the conditions set out in Appendix 1.

### Matters of clarification

2. The scheme is in outline. It was originally submitted with details of the access, but the application was amended with the agreement of the Council and all detailed matters including the access are now reserved for future consideration.
  3. At the date of the appeal there was a significant shortfall in the 5 year housing land supply. However, following the recent adoption of the South Worcestershire Development Plan (SWDP), the Council states that it now has a 5 year supply of housing land for this area. The appellants contest that; they say that the Council has been a persistent under-provider of housing over the last 8 years and that a 20% buffer should therefore be applied to the calculation, which would bring the supply below 5 years. However, 8 years covers the recession period, not a full economic cycle, and is not long enough to establish under-provision. The SWDP is a recent plan which has been found sound on examination. I have dealt with the appeal on the basis that a 5 year supply exists.
-

## **Main Issue**

4. The main issue in this case is the effect of the proposed development on the character of the landscape and the village.

## **Reasons**

5. The site lies outside the development boundary for Abberley Common. Policy SWDP 2 of the adopted South Worcestershire Development Plan resists most forms of development, including market housing, outside development boundaries. However, it is government policy as set out in the Framework to boost significantly the supply of housing land and this objective carries considerable weight. The site is well located in relation to the village, with the Post Office and Store very close and the school a few minutes' walk. Abberley Common is defined as a Category 1 village in Annex D of the SWDP; Policy SWDP 2 indicates that such villages contain a range of facilities to meet local needs and are suitable for accommodating market housing. The existence of a 5 year supply of housing does not preclude sustainable development.
6. The site rises up eastwards from The Common towards Apostles Oak Cottage but it is not widely visible. It can be seen from the A443 Stockton Road, but the Council have already accepted built development along this frontage by virtue of the SWDP allocation for 14 homes. Otherwise it is mostly visible in private views from individual properties. In more distant views the site is seen in the context of the houses and roofs of Abberley Common. The site is a rather ordinary field and does not lend any particular character to the locality.
7. The development would be low density, allowing for plenty of planting and greenery between the houses which would soften the impact of the scheme; it would also include open areas for drainage, a green and a bat corridor. Being on the lower slopes it would not be seen as an encroachment on Abberley Hill, and in medium to more distant views the development would be seen against, and as natural part of, the village. The view from the A443 would be improved compared with the allocation of 14 houses since the density would be lower and would afford more opportunity for gaps and planting. Whilst the old hedge along the frontage would have to be altered for the access, it would be affected by the SWDP allocation in any event.
8. Regarding development form, Abberley Common currently consists of development loosely arranged along the road frontages, but it is largely made up of fairly modern houses in the context of which the proposed development would not look out of place. I note that the Council have accepted other development that does not front the roads; a permitted scheme to the north of the village would require a cul-de-sac and a further allocation in the SWDP north of the site would require some means of access into the site interior. The scheme is in outline with all matters reserved so it would be possible, if the Council were concerned, to ensure that the design did not take on the standard characteristics of a typical estate layout.
9. In conclusion, whilst the site is outside the development boundary, the scheme would not harm the character of the landscape or the village and in certain respects would be an improvement on the form of the allocated site. The development would not conflict with the objectives of Policies SWDP 21 and 25 which aim to ensure that development integrates with its surroundings and with the character of its landscape setting.

10. On the matter of sustainability, the scheme would not run counter to the environmental aspect of sustainable development for the reasons given above. Regarding the economic role, the scheme would generate economic activity during construction and would support village facilities. As regards the social role, the scheme would assist towards the government's objective of boosting the supply of housing and would help towards supporting local facilities and local economic activity. 40% of the units would be affordable housing through the obligation under s106 dated 28 April 2016, in accordance with Policy SWDP 15. The provision of housing including affordable housing carries considerable weight.
11. Whilst recognising the breach of Policy SWDP 2 in terms of its position relative to the development boundary, the development would accord with the remainder of the development plan and would not harm or obstruct its objectives and I consider that it would be in accordance with the plan as a whole. The benefits of the scheme would significantly outweigh the breach to Policy SWDP 2, and the scheme amounts to sustainable development.

#### *Other matters*

12. Some objections have raised the question of flooding, although the Council has not referred to flooding as a matter of concern. Neither the Lead Local Flood Authority nor the South Worcestershire Land Drainage Partnership have objected to the scheme and I consider that any drainage issues are capable of resolution.
13. Some are concerned about the impact on local services. Whilst the scheme in conjunction with other allocated permitted sites would add to the numbers of residents in the village, the scheme would in fact represent an increase of only 11 dwellings over that already allocated. I consider that the additional residents would have potentially beneficial effects in providing greater support to local services. In addition, the planning obligation under s106 would provide contributions towards improved facilities at Abberley Parochial Primary School and Chantry High School.
14. Concerns have been raised about the footway along the A443. I note however that the Highway Authority has not raised any objection on this ground. The road carries a reasonable amount of traffic but is not constantly busy, and the walk from the site is relatively short, so although the footway is not generous I do not consider this sufficient reason to resist the scheme. The SWDP allocation on the site fronting the A443 would in any case give rise to pedestrians using this route. A condition is imposed requiring widening of the footway.

#### *Obligation*

15. The unilateral undertaking submitted under s106 obliges the developer to make appropriate provision for affordable housing and to provide contributions to improvements in education facilities, highways and open space. These are site specific requirements and I am satisfied that the obligation meets the tests in the CIL Regulations.

#### *Conditions*

16. In addition to the standard outline conditions, I have attached conditions which set out additional requirements for landscaping and tree protection in the interests of protecting the character and appearance of the locality, slab levels

and cross sections, to protect the living conditions of neighbouring dwellings; the submission of a drainage plan, to protect the site and locality from flood risk; the carrying out of a land contamination assessment and any necessary remediation arising from it, to protect future residents; the submission of a biodiversity management and enhancement plan and an external lighting plan, in the interests of biodiversity and for the avoidance of harm to bats; the submission of details of the widening of the footway in the interests of highway safety; the provision of wheel cleaning and vehicle and plan parking during construction, for the same reason; and construction operating hours, to protect residents' living conditions.

17. Some of the Council's conditions as set out in the officer's report are excessively detailed and prescriptive and many are unnecessary. It is not necessary to include a condition requiring adherence to the application drawing since it is only a site plan. Suggested conditions 4, 24, 25, 26, 27, 28, 29 and 30 are unnecessary because layout, appearance and access are reserved matters. Suggested condition 5 is not needed because affordable housing is dealt with by means of the planning obligation. Suggested conditions 8 to 12 are excessively detailed and prescriptive and are condensed into condition 7 below. Suggested condition 13 is likewise condensed into condition 8 below. Suggested condition 18 is a building regulations matter. Suggested conditions 19 and 20 regarding electric vehicle sockets and broadband connections are not necessary for the development to go ahead and are a matter for the developer. Suggested condition 23 on housing mix relates to the old, superseded development plan; the SWDP indicates that housing mix should be informed by the latest SHMA and this is a matter for dialogue between developer and local authority. The representation from Severn Trent Water Ltd, which simply indicates the need for some hydraulic modelling if all the developments were built, does not justify imposing suggested condition 35, which is a Grampian condition with an indeterminate timescale, on this specific planning permission.

#### *Conclusion*

18. I have considered all the other matters raised but none is of such weight as to alter the balance of my conclusions. For all the above reasons, the appeal is allowed.

*Jonathan Bore*

Inspector

## Appendix 1

### Conditions

- 1) Details of access, appearance, landscaping, layout, and scale (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The landscaping scheme submitted in accordance with Condition 1 shall include details of walls, fences, surface treatments to drives, cycle and footways, and tree, hedge and shrub planting. All approved planting shall be carried out concurrently with the development or no later than the first planting season following the completion of the development. If within 5 years of the completion of the landscaping scheme any tree, hedge or plant dies, is removed or becomes seriously diseased, it shall be replaced with another of the same species and size in the same location unless the local planning authority gives written approval to any variation.
- 5) The landscaping scheme submitted in accordance with Condition 1 shall include a landscape management plan that shall include long term design objectives, management responsibilities and maintenance schedules for all areas other than domestic gardens. The plan shall be implemented as approved.
- 6) The reserved matters submitted in accordance with Condition 1 shall include details of the levels of the existing site, the proposed slab levels of the dwellings and a datum point outside the site and cross sections of the site to show the height of the dwellings relative to existing neighbouring development.
- 7) Development shall not begin until drainage works, including a sustainable urban drainage scheme, have been carried out in accordance with details to be submitted to and approved in writing by the local planning authority.
- 8) Development shall not begin until a scheme to deal with any contamination of the site has been submitted to and approved in writing by the local planning authority. The scheme shall include an investigation and assessment to identify the extent of contamination and the measures to be taken to avoid risk to the public when the site is developed. If contamination is found, development shall not commence until the measures approved in the scheme have been implemented.
- 9) Development shall not begin until a biodiversity management and enhancement plan has been submitted to and approved by the local planning authority and the plan shall be implemented as approved.

- 10) Prior to the commencement of development an external lighting scheme shall be submitted to and approved by the local planning authority and the scheme shall be implemented as approved.
- 11) The existing trees and hedgerows shown to be retained on the tree survey submitted in support of the outline application shall not be damaged or destroyed, uprooted, felled, lopped or topped during the construction period of the development without the prior written consent of the local planning authority. Any trees and hedgerows removed without such consent or which die or become seriously damaged or diseased during that period shall be replaced with healthy trees of such size and species as shall be agreed with the local planning authority.
- 12) The erection of fencing for the protection of the retained trees and hedgerows shall be undertaken in accordance with details to be submitted to and approved by the local planning authority before any equipment, machinery or materials are brought on to the site for the purposes of the development. The protective fencing shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the written consent of the local planning authority.
- 13) Prior to the commencement of development, details of the widening of the footway from the site access to the Post Office shall be submitted to and approved by the local planning authority and the development shall not be occupied until the footway has been widened in accordance with the approved details.
- 14) The development shall not begin until wheel cleaning apparatus and parking for site operatives and visitors during construction has been provided in accordance with details to be submitted to and approved in writing by the local planning authority. The apparatus and parking shall be operated and maintained in accordance with the approved details during the construction of the development hereby approved.
- 15) Works of demolition and construction shall not take place outside the following hours: Monday to Friday, 07:30 hrs to 18:00 hrs, and Saturdays 08:00 hrs to 13:00 hrs, and there shall be no such work on Sundays or Public Holidays.