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## Appeal Decision

Site visit made on 15 June 2016

**by Claire Victory BA (Hons) BPI MRTPI**

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

**Decision date: 7 July 2016**

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**Appeal Ref: APP/J1860/W/16/3147364**

**Land east of Main Road, Kempsey, Worcestershire WR5 3LH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
  - The appeal is made by Lioncourt Homes Ltd against Malvern Hills District Council.
  - The application Ref 15/01748/FUL, is dated 7 December 2015.
  - The development proposed is the erection of 21 dwellings together with public open space (including community orchard), drainage attenuation and access.
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### Decision

1. The appeal is dismissed and planning permission is refused.

### Procedural Matters

2. The South Worcestershire Development Plan (SWDP) was adopted by the Council on 25 February 2016. I have therefore determined this appeal with regard to the policies in this development plan.
3. A unilateral undertaking has been submitted that would provide for on-site and off-site affordable housing and contributions toward cycling and walking infrastructure, education facilities and public open space. I shall deal with this in more detail below, including an assessment of the contributions against the statutory tests set out in the Community Infrastructure Levy (CIL) Regulations 2010.

### Background and Main Issues

4. The Council has indicated in its appeal statement that if it had determined the application it would have refused it on the basis that the proposal would materially harm the open nature of the Significant Gap; that it would lead to a harmful reduction in the quantity and quality of public open space; and that it would cause harm to the setting of the village within its local landscape.
  5. Against this background, I consider the main issues in the appeal are:
    - The effect of the proposal on local provision for open space;
    - The effect of the proposal on the Significant Gap; and
    - The effect of the proposal on the character and appearance of the surrounding area.
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## Reasons

6. At the time the application was submitted the Council was unable to demonstrate a five year supply of deliverable housing sites. However the Council has since provided information to indicate it has a 5.5 year supply, with a 5% buffer<sup>1</sup>, and the appellant has confirmed the issue of a five year supply is not determinative in this appeal. Consequently policies relevant to the supply of housing should not be considered out of date and paragraph 49 of the National Planning Policy Framework (the Framework) is not engaged.

### *Local provision for open space*

7. Planning permission was granted for 120 dwellings, access, parking, public open space with play facilities and landscaping on the appeal site and land to the south, known as Phase 1<sup>2</sup>. Phase 2, the appeal site, was to include public open space including a large community orchard. Policy SWDP5 states that once a planning permission has been implemented, the associated Green Infrastructure will be protected as green space and the proposals map updated to reflect this.
8. The development would result in the loss of public open space permitted as part of Phase 1, which is currently under construction. Taking both sites together, the amount of public open space that would be provided would fall below the 40% required on sites of more than 1 hectare, as required by policy SWDP5. Moreover, the narrow and linear nature of the open space, formed of a strip of land along the Main Road frontage and land along the northern boundary of the site, would reduce its recreational value.
9. Further to the above, policy SWDP38 states that development of Green Space will not be permitted unless the proposal is for a community or recreational use, it can be demonstrated that the space is surplus to requirements, or a replacement space of at least equivalent value has been secured in a suitable location. None of these exceptional circumstances have been demonstrated.
10. The appellant has offered a financial contribution towards the provision or enhancement of public open space as a unilateral undertaking, but as this would not necessarily secure the quantum of open space required by SWDP5, which should be provided on site, this would not overcome the harm that would be caused by the development.
11. For these reasons I conclude that the development would have an unacceptably harmful effect on the quality and quantity of local open space provision. This would be contrary to policies SWDP5 and SWDP38.

### *Effect on Significant Gap*

12. The appeal site is located at the northern edge of Kempsey, a village about a mile south of Worcester. The appeal site is wholly within a Significant Gap, covered by policy SWDP2. The purpose of the designation is to prevent coalescence between the built up areas of Worcester and Kempsey and seeks to prevent any development that would undermine its open character.
13. I acknowledge that the designation of the appeal site as part of the Strategic Gap is recent. However, the development would not extend further north than

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<sup>1</sup> Council's statement – Appendix 2

<sup>2</sup> Ref. 13/00417/OUT

existing dwellings opposite the appeal site on Main Road. The self-contained nature of the village would be maintained and would be clearly separate from the built up area of Worcester, so that there would be no coalescence between the settlements. As such, in these particular circumstances, the integrity of the Significant Gap would not be undermined, and the proposal would accord with Policy SWDP2.

#### *Character and appearance*

14. The site is an open field which is enclosed along the northern boundary by a well-established hedgerow, and along the eastern boundary by mature trees and hedges and Hatfield Brook, with open fields beyond. New dwellings under construction to the south comprise Phase 1 of the site granted outline planning permission<sup>3</sup> to which the appeal site is also subject. There are residential properties opposite on Main Road.
15. The ground level of the site rises gradually towards the northern boundary, although it also slopes down noticeably towards the north east corner. The proposed dwellings are shown as bungalows and the sectional drawings indicate that the ridge height of the dwellings would generally be lower than those under construction as Phase 1, which are predominantly two storey. The maximum ridge height could be controlled by condition.
16. The development would be visible in short range views from the Main Road frontage, although properties would be set back from the road, and viewed within the context of existing houses to the south and west. The dwellings might also be seen from the adjacent public right of way, albeit direct views into the site are likely to be restricted due to extensive soft landscaping along the site boundary.
17. In longer range views the roofs of some houses may be visible from Main Road above the hedgerow bounding the site to the north and enclosing the field to the north. Moreover, they would be likely to be lower in height than the two storey houses to the south of the appeal site fronting Main Road, a number of which have steeply pitched roofs that are visible for some distance, and thus the proposed dwellings would not be particularly discernable from surrounding development. Consequently whilst there would be some limited harm arising from the loss of open land, in long distance views the development would be seen as an integral part of the built up area of Kempsey.
18. Taking all of the above into account, I conclude that the proposal would have an acceptable impact on the character and appearance of the surrounding area. As such there would be no conflict with policies SWDP21 and SWDP25. These require development, amongst other things, to be of a high design quality, and to be appropriate to and integrate with their landscaping setting.

#### **Other Matters**

19. Policy SWDP15 requires 40% of dwellings to be affordable housing on sites of 15 or more houses. This would equate to 8.4 dwellings for the appeal proposal. The submitted unilateral undertaking provides for 8 affordable houses to be provided on site. In addition, a commuted sum would provide an off-site contribution equivalent to 0.4 dwelling, and 80% of the units would be

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<sup>3</sup> Ref. 13/00417/OUT

for social rent with 20% to be fixed equity or shared ownership, in accordance with the expectations of the policy.

20. Policy SWDP7 requires development to provide or contribute towards the provision of infrastructure needed to support it. Contributions have been offered to improve walking and cycling connectivity; to expand Kempsey Primary School to 1.5 forms of entry and expansion of sixth form accommodation at Hanley Castle High School; and towards the purchase, provision, improvement and/or maintenance of open space. Future residents would place increased demand on these facilities and I consider the specified infrastructure is fairly and reasonably related to the development and necessary to make the development acceptable in planning terms, and would meet the tests in paragraph 204 of the Framework and Regulation 122 of the Community Infrastructure Levy (CIL) Regulations 2010.
21. The Council has not indicated whether planning obligations towards the provision of the aforementioned infrastructure would result in the pooling of five or more such agreements, and therefore whether the contributions sought would be contrary to Regulation 123 of the CIL Regulations, but as I am dismissing the appeal I have not pursued this matter with the parties.

### **Conclusion**

22. I have found that the proposal could be satisfactorily assimilated into the surrounding landscape, and that it would not undermine the function of the Significant Gap. Furthermore, the provision of affordable housing would be a benefit of the scheme.
23. Nevertheless, I have found that there would be a harmful loss of public open space in both quantity and quality, and this would outweigh the benefits of the proposal. As the site lies outside the settlement boundary of Kempsey there would also be a conflict with policy SWDP2.
24. The Council maintains that it has a 5.5 year HLS with a 5% buffer. I acknowledge that the housing requirement in the SWDP is not an upper limit or ceiling on development, and I have had regard to paragraph 47 of the Framework, which seeks to boost significantly the supply of housing. The appellant has also pointed out that Kempsey is a Category 1 village in the settlement hierarchy and that the village has sufficient services and facilities to support sustainable growth. However, even if I were to conclude there is a shortfall, and that the relevant policies for the supply of housing should not be considered up to date, the adverse impacts of granting planning permission in this instance would significantly and demonstrably outweigh the benefits.
25. For the above reasons I conclude that the appeal should be dismissed and planning permission refused.

*Claire Victory*

INSPECTOR