



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: 23 August 2016

Appeal Ref: APP/J1860/W/16/3144547

Mayfield Road, Malvern, Worcestershire, WR13 5AE

- 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 Marcus Little - Guild (Midlands) Ltd against the decision of Malvern Hills District Council.
 - The application Ref 15/00627/OUT, dated 5 May 2015, was refused by notice dated 25 November 2015.
 - The development proposed is the erection of up to 69 dwellings (some affordable), with all matters reserved except access.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The appeal was made in outline with all matters except access reserved for future consideration. A masterplan has also been provided which the appellant has confirmed is for illustrative purposes only. I have determined the appeal on this basis.
3. The South Worcestershire Development Plan (SWDP) was produced jointly with Wychavon District Council and Worcester City Council, and was adopted by all three Councils on 25 February 2016. The SWDP thus can be afforded full weight in accordance with paragraph 215 of the National Planning Policy Framework (the Framework), and the Council has confirmed that all policies of the Malvern Hills Adopted Local Plan (2006) referred to in the Delegated Officers Report and Decision Notice have been superseded by the SWDP.

Main Issues

4. The main issues in the appeal are:
 - The effect of the development on the character and appearance of the area;
 - Whether the occupants of the development would have acceptable access to shops and services;
 - Whether the development would make adequate provision for affordable housing; and
 - Whether the development would make adequate provision for infrastructure.
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Reasons

Character and appearance

5. The appeal site is an open field on the eastern side of Mayfield Road, and on the edge of the settlement of Great Malvern. It lies on either side of a single dwelling fronting Mayfield Road, and is formed of grassland for the grazing of horses, and some hardstanding. The site is bisected by an unnamed brook, and is bordered by shrubs and hedges. Land to the south along Madresfield Road is designated as green space including an avenue of mature Oak Trees. The eastern side of Mayfield Road is largely undeveloped, and the lane is narrow and enclosed by trees and hedgerows. Consequently, whilst there is some residential development along parts of the western side of Mayfield Road, the appeal site has a semi-rural character.
 6. The outline proposal is for up to 69 dwellings, and the density of the scheme would be up to 33 dwellings per hectare, compared with the average net density of 30 dwellings per hectare required by Policy SWDP 13 for development of this scale outside the town centre. The appellant has pointed out that this only marginally exceeds the policy requirement, and the detailed plan could have fewer dwellings than permitted at outline stage. An alternative masterplan has also been provided at Appendix 21 which shows 54 dwellings and a greater proportion of the site given over to public open space, but in any event, the inclusion of part of the site within Flood Zone 2 would constrain the potential layout for residential development.
 7. I recognise that there are different ways in which the site might be developed, but the planning permission would provide the basis for what could be built on the site and thus consideration must be given to the upper limit as set out in the application. Development at a higher than average density outside the settlement boundary would not provide an appropriate transition from a suburban residential area into open countryside, and thus would be unsympathetic to the character and appearance of the area. Whilst there would be some screening from the hedges surrounding the site, the roofline of the proposed dwellings, even if they were only single storey, would be likely to be seen from Mayfield Road, and from the adjacent public right of way.
 8. Furthermore, the hedgerow boundaries on either side of Mayfield Road are identified in the Landscape and Visual Impact Assessment as making a positive contribution to the semi-rural character of the area and as having a high sensitivity to change. The harm arising from the proposed development density could be exacerbated further by potential damage that may arise from the construction of the footway, as it is not certain whether it could be satisfactorily accommodated without damage to the root system of the hedgerow. Although a topographical survey has been undertaken there is no arboricultural report to confirm that the hedgerow would not be adversely affected.
 9. Only 21% of the site would be informal open space. This is a significant under provision compared with the 40% required by Policy SWDP5 for sites of one hectare or greater. The appellant has submitted a unilateral undertaking that would provide off-site public open space provision or enhancement and SWDP 39 states where it is impractical or inappropriate to deliver all open space typologies on site, developer contributions towards off-site provision would be
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acceptable. As such, whilst it might be preferable for a greater proportion of public open space to be provided within the site itself, this alone would not justify dismissal of the appeal. I also acknowledge that the proposal would make provision for enhancements to biodiversity but this would not overcome the visual harm that would be caused.

10. Taking all of the above into account I conclude that the proposal would cause material harm to the character and appearance of the area, contrary to policies SWDP21 and SWDP25, which, amongst other things, require development to be of a scale, height and massing that is appropriate to the setting of the site and surrounding landscape character and townscape, including existing urban grain and density, and to be appropriate to, and integrate with, the character of the landscape setting.

Access to shops and services

11. The appeal site is located relatively close to the junction with Madresfield Road, which forms a crossroads with Pound Bank Lane and Mayfield Road. The appellant considers that future residents of the appeal site would travel north via Elgar Avenue towards shops and facilities including those on Pickersfield Road, with a range of services within 2km.¹ However, there are other facilities, including a convenience shop off Pound Bank Lane that are closer and buses along Pound Bank Lane have a greater frequency of services. Consequently it is not unreasonable to expect that a proportion of future occupiers may travel south along Mayfield Road to access services.
12. Mayfield Road is a narrow single carriageway of approximately 3.5m in width. The road is one way northbound and subject to a 30 mph speed limit. There is no footway on either side of the road, and it is enclosed by trees and hedges along both sides, and with relatively steep grassed banks. There is a grass verge along the eastern side but it is variable in width and the steep incline of the bank in places makes pedestrian access along Mayfield Road difficult. The Highway Authority has expressed concern about the potential for conflict between pedestrians and cyclists and motor vehicles.
13. Residents walking along Mayfield Road from the appeal site in a northerly direction would travel a shorter distance along Mayfield Road but a bend in the road in the vicinity of Elgar Avenue, traffic speed and a lack of streetlights and footways are all factors that could increase the risks to pedestrians using this route. If residents walked to the southern end of Mayfield Road the route would be somewhat shorter and towards oncoming traffic, but would still be without lights or a segregated footway, or a signalled crossing at Madresfield Road. In addition, cyclists would only be able to travel in a northerly direction due to the one way traffic restriction. I therefore consider that the access would be unsatisfactory using either route.
14. The access plan submitted with the application indicates that a 3m wide carriageway with a 1.8m wide footway on its eastern side could be accommodated within Mayfield Road. The appellant has provided a legal opinion to support the view that the footway can be accommodated wholly within either land controlled by the appellant or the Highway Authority. However, the proposed footway does not lie within the red line of the appeal

¹ "Providing for Journeys on Foot" Institute of Highways and Transportation

site or other land owned by the appellant, and the Highway Authority has not confirmed it as falling within the highway.

15. It has been put to me that a Grampian style condition could be used to prevent the development from commencing before the footway is provided. The Planning Practice Guidance (the Guidance)² advises that such negatively worded conditions should not be used where there are no prospects at all of the action in question being performed within the time limit imposed by the permission. In this case, there is not convincing evidence that the footway would be capable of implementation in the event that the development went ahead.
16. The appellant contends that the Council has supported a scheme at the 'BMX site' at the northern end of Mayfield Road, with similar pedestrian and cycle access to that proposed in the appeal scheme.³ However that site is on the west side of Mayfield Road, so it is materially different to the proposal before me, and in any case, the application was withdrawn. I have also had regard to the fact that there have been no accidents involving pedestrians or cyclists in the vicinity of the proposed access, but there are currently only a small number of dwellings with an access to this section of Mayfield Road, and the number would be significantly increased if the appeal were allowed. As such the lack of accidents of this type is not necessarily an indicator that the development would be acceptable.
17. A unilateral undertaking has been submitted which would provide a financial contribution towards access improvements, including junction improvements and dropped kerbs along routes to Elgar Avenue, Madresfield Road and Pound Bank Lane. This would assist with level access in both directions from the appeal site to local services along these roads, but would not address the aforementioned concerns raised in relation to Mayfield Road.
18. I therefore conclude that because of the unsatisfactory arrangements for pedestrians, there would not be adequate access to shops and services, and thus the proposal would conflict with Policy SWDP4 and SWDP21.

Affordable Housing

19. Policy SWDP15 B.i. requires 40% affordable housing on sites of 15 or more dwellings on greenfield land. The appellant has submitted a signed and executed undertaking to meet the Council's requirement and so I find that the development would make adequate provision for affordable housing and would accord with Policy SWDP15.

Infrastructure

20. The Council is seeking contributions towards transport infrastructure, pedestrian crossing facilities and open space, in accordance with Policies SWDP7 and SWDP39. During the appeal a unilateral undertaking was submitted by the appellant in respect of these contributions.
21. The Open Space Supplementary Planning Document (SPD) (2008), underpinned by an Open Space Study from 2007, requires a planning

² Paragraph 009 Reference ID:21a-009-20140306

³ Ref. 14/00788/OUT

contribution towards open space of £4,600 per dwelling. However, the SPD supports Policy CN12 of LP 2006, which has been superseded by policies in the SWDP, and it is unclear how the contribution required by the SPD relates to the on-site requirement in Policy SWDP39. Furthermore, although the Council has stated each of the contributions would be compliant with the Framework and the Community Infrastructure Levy Regulations 2010, no details have been provided as to how the £166,362.31 contribution towards transport infrastructure would be spent. Nonetheless, as I am dismissing the appeal for other reasons, it is not necessary for me to consider this matter any further.

Other Matters

22. At the time the application was determined, the Council accepted that it did not have a five year supply of deliverable housing sites. However, the Council now maintains it is able to demonstrate a 5.5 year housing supply with a 5% buffer, based on an estimate of likely supply to 31 January 2016, added to the latest available actual data from 31 March 2015. The appellant considers there is only a 4.78 year supply of deliverable housing sites if a 5% buffer were to be applied, and that the Council's evidence to January 2016 is based on a projection and not actual completions. Moreover, it is asserted that a 20% buffer should be applied, due to persistent under delivery, but I note that the SWDP⁴ Inspector found that a 5% buffer was appropriate and the plan has been adopted very recently.
23. The appellant has also referred to a number of appeals where housing developments were permitted outside defined settlement boundaries where a five year supply was demonstrated. In the cases cited by the appellant, the Inspectors found that other material considerations outweighed the policies in the development plan. However, even assuming that the Council is unable to demonstrate a five year housing supply to the extent argued by the appellant, the adverse impacts in terms of the harm to the character and appearance of the area and the inadequate access to services and facilities significantly and demonstrably outweigh the benefits of the scheme when assessed against the policies of the Framework as a whole. This includes the delivery of up to 69 dwellings, the provision of affordable housing and biodiversity improvements. In that event the presumption in favour of sustainable development does not apply.

Conclusion

24. For the above reasons I conclude that the appeal would not accord with the development plan and there are no material considerations to indicate otherwise. Therefore the appeal should be dismissed.

Claire Victory

INSPECTOR

⁴ SWDP Stage 1 Inspector's Interim Conclusions – Appendix 4 to Appellant's rebuttal statement of case