



Appeal Decision

Hearing held on 14 February 2017

Site visit made on 14 February 2017

by Jameson Bridgwater PGDipTP MRTPI

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

Decision date: 23 March 2017

Appeal Ref: APP/W1850/W/16/3157869

Land East of Brook Lane, North of the B4220 Bosbury, Hereford

- 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 Braemar Property Developments Ltd and Parkroy Ltd against the decision of Herefordshire Council.
 - The application Ref 160450, dated 15 February 2016 was refused by notice dated 3 May 2016.
 - The development proposed is described as 'Residential development for up to 21 dwellings of which 8 will be affordable'.
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Decision

1. The appeal is allowed and outline planning permission is granted for Residential development for up to 21 dwellings of which 8 will be affordable at Land East of Brook Lane, North of the B4220 Bosbury, Hereford in accordance with the terms of the application, Ref 160450, dated 15 February 2016, subject to the 21 conditions set out in the attached schedule.

Application for costs

2. An application for costs was made by Braemar Property Developments Ltd and Parkroy Ltd against Herefordshire Council. This application is the subject of a separate decision.

Preliminary matters

3. The planning application to which the appeal relates was submitted in outline form with all matters reserved except for access. An indicative layout was submitted with the planning application, this plan was for illustrative purposes only.
 4. A Unilateral Undertaking was submitted under section 106 of the Town and Country Planning Act 1990. I deal with the contents of this below.
 5. The Hearing sat for 1 day. I held an accompanied site visit on 14 February 2017.
 6. A Statement of Common Ground was submitted which sets out the matters of agreement and those in dispute.
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Main issues

7. The main issue in the appeal is the effect of the proposal on the character and appearance of the area.

Reasons

Housing land supply and planning policy

8. Paragraph 47 of the National Planning Policy Framework (the Framework) seeks to boost significantly the supply of housing. It identifies that Councils should ensure that their local plans meet the full, objectively assessed needs for market and affordable housing in the housing market area, as far as is consistent with the policies of the Framework. In addition, they must identify and update annually a supply of specific deliverable sites sufficient to provide a 5 year supply of land for housing against their housing requirements, with an additional buffer of either 5% or 20% (moved forward from later in the plan period), to ensure choice and competition in the market for land.
9. The Council have confirmed in their statement that they are unable to demonstrate the provision of a 5 year supply of land for housing, measured against their housing requirements. Moreover, based on the evidence before me it was clear that the shortfall in housing supply is significant with the Council only able to demonstrate 4.39 years of deliverable land for housing supply.
10. Policies RA1, RA2 and SS2 of the Herefordshire Local Plan Core Strategy 2011-2031 (HLP), seek to restrict development in the countryside and form part of the Council's strategic approach to the distribution and location of housing. They are, therefore, relevant policies for the supply of housing and given there is no 5 year supply they cannot be regarded as being up to date. In these circumstances, paragraph 14 of the Framework states that, the presumption in favour of sustainable development means that planning permission should be granted, unless any adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole or unless specific Framework policies indicate development should be restricted.
11. The provision of up to 21 dwellings, of which would include 40% affordable housing, would make a significant contribution to the supply of housing. This weighs significantly in favour of the proposal, particularly given the absence of a 5 year supply of land for housing.
12. In reaching this conclusion I have taken account of the emerging Bosbury Neighbourhood Development Plan. However, the examination process is not yet complete. Consequently, there is no substantive evidence before me to demonstrate that the housing land being promoted within the emerging plan would be deliverable now to meet the identified shortfall in supply. Thus, having regard to paragraph 216 of the Framework, the policies contained within the emerging plan can be given only limited weight and they have not had any significant bearing on my determination of the appeal.

Character and appearance

13. The appeal site is broadly triangular in shape and lies on the north-east fringes of the village, to the north of the B4220, and has an agricultural character, reflecting the rural setting of the village. The historic core of the village is of linear form, and the historic pattern of development is such that it has developed in an easterly direction. I confirmed by way of my site visit that the appeal site is visible from the B4220 and Brook Lane, furthermore, the site is also visible from the public footpath that links Harbour Hill (BZ45A) to the edge of Bosbury.
14. The appellant has proposed a single access to the site from the B4220. The site comprises of a triangular parcel of land, bounded by an established hedgerow. The topography within the site itself generally slopes down from the B4220 towards Dowdling's Brook and the character of the site is generally consistent with the local landscape character of the 'Principal Settled Farmlands'. Further I accept that the site contributes visually to the transition to the adjoining 'Principal Timbered Farmlands' local landscape character area, particularly in relation to views from Harbour Hill. Moreover, it was common ground that the appeal site has no landscape designation and has no characteristics that would identify the site as a valued landscape (paragraph 109 of the Framework).
15. Notwithstanding this, it is clear that the appeal site does have a local aesthetic value, and this has been evidenced by the representations both in writing and during the Hearing from local residents. It is common ground that the proposed development would have an effect on the open character of the appeal site. Moreover, I accept that the introduction of the built development would change the outlook for local residents particularly from those in close proximity to the appeal site. Ultimately, the effect of the proposal would be to increase the presence of built development at the edge of the settlement.
16. I have carefully considered the Council's representations in relation to the effect of the proposal in relation to the linear/wayside pattern of development of the village. Whilst I accept that the character of the settlement was clearly identified in the previous Inspector's decision¹; the appeal before me proposes 16 fewer dwellings, a significant reduction and material change from the previous scheme, reducing the likelihood of a nucleated pattern of development. Furthermore, given this reduction there is no substantive evidence before me that would demonstrate that a development of up to 21 dwellings could not be designed to reflect the village's linear settlement pattern or that any proposed layout could not reflect the transitional character of the village edge. This was confirmed at the Hearing by the Council's landscape officer, who was clear that the layout of the proposed development could be designed to reflect the prevailing linear/wayside character of the village at the reserved matters stage. Given that it is accepted that the proposed development could be laid out in linear/wayside form, it would therefore not appear incongruous on the approach into the village from the north-east and as one leaves the village heading in that direction.

¹ APP/W1850/W/15/3053084

17. Moreover, the retention and improvement of the existing hedgerows (a reserved matter) particularly at the proposed access and at the junction of the B4220 and Brook Lane would ensure that the proposed development would not materially erode the transition from village core to open countryside when viewed in the context of the settlement as a whole. Consequently, the proposed development would not result in material harm to the village's linear/wayside pattern of development or the local landscape character of the 'Principal Settled Farmlands'.
18. I have carefully considered the Council's concerns in relation to the wider visual impact of the proposal, particularly from locations such as Harbour Hill. However, whilst I accept that the appeal site occupies an elevated position in relation to the village core, given the sites context and close proximity to the existing development on both sides of the B4220, including the Forge Bank estate, it would have limited effect on the visual significance of the wider views across the site to the 'Principal Timbered Farmlands' as identified in the LCA. Furthermore, taking account of the topography of the appeal site, a sensitively planned and designed landscaping scheme at the reserved matters stage consistent with the 'Principal Settled Farmlands' LCA would be likely to ensure that the development would be viewed as a natural linear extension of Bosbury. As a result, this would to a large degree mitigate the limited harm in relation to the change of character, outlook and wider visual effects.
19. Having reached the above conclusions the proposed development would result in moderate harm to the character and appearance of the area. The proposal would therefore conflict with Policies LD1, RA2, SS1 and SS6 of the HLP. These seek amongst other things to ensure that new development does not harm the countryside and its setting.

Planning obligations

20. The appellant has submitted a Unilateral Undertaking (7 February 2017) pursuant to Section 106 of the Act, providing planning obligations in relation to education, highways/public transport, waste/recycling, on-site open space and affordable housing to offset the effect of the proposed development. None of the planning obligations contained within the agreement appear to be in dispute and the Council have provided a statement of CIL regulation compliance. However, I have considered them against the tests in Regulation 122 of the CIL Regulations 2010 and the Framework nonetheless.
21. The first obligation deals with education provision related to the additional demand that would be created by the proposed development and the calculation of the contribution. The Council have identified a need for a contribution for the provision of school places at Bosbury Primary School to meet the needs of the proposed development. Moreover, it was confirmed at the Hearing that this would not be in contravention of Regulation 123 of the CIL regulations 2010 in relation to pooling. The provision of a contribution for education is reasonably related in scale and kind to the needs generated by the proposed development. Further, these requirements are consistent with Policy SC1 of the HLP.
22. The second obligation deals with highway and public transport improvements. The Council has identified a need for a contribution towards the provision of

traffic calming, enhanced cycling/walking routes and localised bus infrastructure in Bosbury to meet the needs of the proposed development. Furthermore, it was confirmed at the Hearing that this would not be in contravention of Regulation 123 of the CIL Regulations 2010 in relation to pooling. Moreover, the provision of a contribution towards highway and public transport improvements is reasonably related in scale and kind to the needs generated by the proposed development and is consistent with the requirements of Policy MT1 of the HLP.

23. The third obligation deals with waste/recycling provision. The Council has identified a need for waste and recycling facilities for each new dwelling. The contribution sought in the appeal scheme amounts to the provision of a waste and a recycling receptacle for each dwelling, which was confirmed at the Hearing as reasonably related in scale and kind to the needs generated by the proposed development and is consistent with the requirements of Policy ID1 of the HLP.
24. The fourth obligation deals with the management and retention of on-site open space and any sustainable urban drainage solution. This sets out a notification process for the chosen management arrangements of the on-site open space and sustainable urban drainage solution and restricts the use of the land for public recreation and amenity. This is consistent with the requirements of Policy OS1 of the HLP. The fifth obligation deals with the provision of affordable housing. This sets out the definitions by type and allocation arrangements of the affordable housing, including the local connection criteria. This is consistent with the requirements of Policy H1 of the HLP.
25. I therefore consider that the obligations meet the necessary tests in law and I have taken account of them in reaching my decision.

Other considerations

26. There was local concern raised in relation to the potential effect of the proposed development on the safety of the local road network in the village. However, based on all of the evidence before me and the observations during my site visits, I am satisfied that any increase in traffic from the proposed development would not result in severe harm to highway safety. This is consistent with the conclusions of the Highways Authority who raised no objection in relation to highway safety subject to the provision of site and locality specific highway/public transport improvement work. Additionally, local residents have expressed concern in relation to flooding. Whilst I have no reason to doubt the issues raised there was no technical evidence before me other than that from the Council and Dwr Cymru Welsh Water's Network Development Consultant. I have therefore applied the conditions consistent with their technical findings in relation to drainage and flooding.
27. Further concerns were raised with regard to the social integration of the occupiers of the proposed new homes and that there was no requirement for affordable housing within Bosbury. However, Bosbury is located within the Ledbury HMA that has an identified need for affordable housing. The proposed scheme would make a meaningful contribution toward meeting those needs. Moreover, in relation to social integration the planning obligation sets out local connection criteria which would aid social integration.

28. It is common ground between the parties that there would be no harm to heritage assets. Notwithstanding this, local residents have maintained their concerns in relation to heritage. It therefore rests with me as the decision maker to apply the intended protection for heritage assets as specified in section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) and also to the desirability of preserving or enhancing the character or appearance of the CA in accordance with section 72 (1) of the Act.
29. Based on the evidence before me and my observations at the site visit, there would be adequate separation between the appeal site and the Conservation Area/Grade I Listed Church of Holy Trinity. Furthermore, I have concluded that the appeal site could be developed to relate to the established linear/wayside pattern and scale of development and as such would not appear incongruous in the village context. Consequently, the proposed development would not result in material harm to the character and appearance of the Conservation Area or the setting of the Grade I Listed Church of Holy Trinity. Therefore, the proposed development would not fail to preserve the character or appearance, and consequently the significance, of the Bosbury Conservation Area or the setting and therefore the significance of the Grade I Listed Church of Holy Trinity. Having reached this conclusion there would be no conflict with Policy LD4 of the HLP.
30. Additionally local residents raised concern about potential noise and disturbance during construction from the development. However, this is a matter that could be reasonably mitigated during the construction phase by the imposition of a construction management condition and any post construction noise would be controlled by other environmental legislation.

Conditions

31. The conditions suggested by the Council have been considered in light of the advice contained within the National Planning Practice Guidance and the National Planning Policy Framework. I have amended their wording where required, or have combined or separated others, in the interests of clarity. In addition to the outline implementation conditions, it is necessary for certainty, to define the plans with which the scheme should accord. It is necessary for certainty to define the maximum number of dwellings (21).
32. To minimise the risk of flooding, it is necessary for details of land drainage, foul and surface water drainage to be agreed with the Local Planning Authority. Furthermore, it is necessary to impose a condition requiring a scheme for the provision of not less than 40% affordable housing for the development to comply with the requirements of Policy H1 of the HLP.
33. In the interests of highway and pedestrian safety it is necessary to ensure the construction of the access/parking arrangements in accordance with the approved plans prior to the occupation of any dwelling and that the visibility splays are provided and thereafter retained free from obstruction. In the interests of sustainable travel it is necessary to impose a condition in relation to the provision of cycle parking.
34. To minimise the risk to biodiversity it is necessary to apply a condition in relation to species mitigation and habitat enhancement in accordance with the

submitted ecology report dated September 2014. It is necessary in the interests of amenity to ensure that there is adequate protection for the trees/hedgerows on site during construction. Further it is necessary to control and agree details of methods of construction in the interests of local residents. It is necessary in the interests of amenity to impose a condition restricting the height of the proposed dwellings to a maximum of two storeys in height.

35. It is not necessary to apply conditions in relation to materials, boundary treatments or landscaping as these matters are reserved for future consideration. Further it has not been demonstrated that the provision of a travel plan is necessary in this site specific circumstance.

Planning balance and conclusion

36. I have found that the proposed development would be contrary to the development plan in that it would result in moderate harm to the rural character and appearance of the area. Balanced against this is the contribution to the supply of housing of up to 21 new homes with 40% of those affordable, to which I have given significant weight.
37. Taking everything into account including all other material considerations, I conclude that the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits of the proposed development when assessed against the policies in the Framework as a whole. Furthermore, I have found that paragraphs 49 and 14 of the Framework apply here and in that context the presumption in favour of Sustainable Development is a material consideration which warrants a decision other than in accordance with the development plan.
38. For the above reasons and having regard to all other matters, I conclude that the appeal should be allowed.

Jameson Bridgwater

INSPECTOR

Schedule – Conditions

1. Application for approval of the reserved matters shall be made to the local planning authority before the expiration of three years from the date of this permission.
2. The development hereby permitted shall be begun either before the expiration of three years from the date of this permission, or before the expiration of two years from the date of the approval of the last reserved matters to be approved, whichever is the later.
3. Approval of the details of the layout, scale, appearance and landscaping (hereinafter called "the reserved matters") shall be obtained from the local planning authority in writing before any development is commenced.
4. Plans and particulars of the reserved matters referred to above relating to the layout, scale, appearance and landscaping shall be submitted in writing to the local planning authority and shall be carried out as approved.
5. The development shall include no more than 21 dwellings and no dwelling shall be more than two storeys high.
6. With the exception of site clearance, development shall not commence until a scheme for the provision of 40% affordable housing (up to 8 dwellings) as part of the development on site, has been submitted to and approved in writing by the Local Planning Authority. The affordable housing shall be provided in accordance with the approved scheme which shall include:
 - (1) The numbers, type, tenure and location on the site of the affordable housing provision to be made.
 - (2) The arrangements for the transfer of the affordable housing to an affordable housing provider or the management of the affordable housing, if no Registered Social Landlord is involved;
 - (3) The arrangements to ensure that such provision is affordable for both first and subsequent occupiers of the affordable housing; and
 - (4) The occupancy criteria to be used for determining the identity of occupiers of the affordable housing and the means by which such occupancy criteria shall be enforced.
7. Before any other works hereby approved are commenced, visibility splays shall be provided from a point 0.6 metres above ground level at the centre of the access to the application site and 59 metres back from the nearside edge of the adjoining carriageway (measured perpendicularly) for a distance of 2.4 metres in each direction along the nearside edge of the adjoining carriageway. Nothing shall be planted, erected and/or allowed to grow on the triangular area of land so formed which would obstruct the visibility described above.

8. Prior to the first occupation of any dwelling to which this permission relates an area for car parking shall be laid out within the curtilage of that property, in accordance with the approved plans which shall be properly consolidated, surfaced and drained, in accordance with details to be submitted to and approved in writing by the local planning authority and those areas shall not thereafter be used for any other purpose than the parking of vehicles.
9. Development shall not begin in relation to any of the specified works until details of the works have been submitted to and approved in writing by the local planning authority, and the development shall not be occupied until the scheme has been constructed in accordance with the approved details.
10. Development shall not begin in relation to the provision of road and drainage infrastructure until the engineering details and specification of the proposed roads and highway drains have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and completed prior to first occupation of the development hereby permitted.
11. None of the dwellings shall be first occupied until the roadworks necessary to provide access from the nearest publicly maintained highway have been completed in accordance with details submitted to and approved in writing by the local planning authority.
12. All roadworks shall be completed within a period of 2 years, or other period agreed in writing with the local planning authority, from the commencement of work on the site. This will entail the making good of surfacing, grassing and landscaping in accordance with a specification submitted to and approved in writing by the local planning authority. (Nothing in this condition shall conflict with any phasing scheme, in which respect it will be interpreted as applying to the particular phase being implemented).
13. No development shall take place until an Environmental Management/Construction Management/Method Plan and Statement with respect to the construction phase of the development have been submitted to and approved in writing by the Local Planning Authority. Development works shall be undertaken in accordance with the approved Environmental Management/Construction Management/Method Statement/Plan. Amongst other things, the details shall include, hours of work/piling/deliveries; access arrangements for construction vehicles; contractors parking areas, compounds, including storage of plant and materials; specification of plant and equipment to be used; construction routes; details of wheel washing facilities; loading and unloading areas; minimisation of dust emissions arising from construction activities on the site, including details of all dust suppression measures and the methods to monitor emissions of dust arising from the development; an undertaking that there shall be no burning of materials on site at any time during construction; details of any piling required, including method (to minimise noise and vibrations), duration and prior notification to affected neighbouring properties; overall monitoring

methodology; and details of the responsible person (site manager/office) who can be contacted in the event of a complaint.

14. Within 8 weeks of the first occupation of the development hereby approved a scheme for the provision of covered and secure cycle parking within the curtilage of each dwelling shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details. The cycle parking shall be installed and made available for use within a time scale to be agreed with the local planning authority and thereafter retained for the lifetime of the development.
 15. The recommendations set out in the summary sheet of the ecologist's report from HEC dated September 2014 should be followed in relation to species mitigation and habitat enhancement. Prior to commencement of the development, a habitat enhancement plan should be submitted to, and be approved in writing by the Local Planning Authority and the work shall be implemented as approved. An appropriately qualified and experienced ecological clerk of works should be appointed (or consultant engaged in that capacity) to oversee the ecological mitigation work.
 16. No development, including demolition works shall be commenced on site or site huts, machinery or materials brought onto the site, before adequate measures have been taken to prevent damage to those trees/hedgerows that are to be retained. Measures to protect those trees/hedgerows must include:
 - a) Root Protection Areas for each hedgerow/tree/group of trees must be defined in accordance with BS5837:2012 – Trees in Relation to Design, Demolition and Construction. Recommendations, shown on the site layout drawing and approved by the Local Planning Authority.
 - b) Temporary protective fencing, of a type and form agreed in writing with the Local Planning Authority must be erected around each hedgerow, tree or group of trees. The fencing must be at least 1.25 metres high and erected to encompass the whole of the Root Protection Areas for each hedgerow/tree/group of trees.
 - c) No excavations, site works or trenching shall take place, no soil, waste or deleterious materials shall be deposited and no site huts, vehicles, machinery, fuel, construction materials or equipment shall be sited within the Root Protection Areas for any hedgerow/tree/group of trees without the prior written consent of the Local Planning Authority.
 - d) No burning of any materials shall take place within 10 metres of the furthest extent of any hedgerow or the crown spread of any tree/group of trees to be retained.
 - e) There shall be no alteration of soil levels within the Root Protection Areas of any hedgerow/tree/group of trees to be retained.
 17. Foul water and surface water discharges must be drained separately from the site.
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- 18.No surface water shall be allowed to connect (either directly or indirectly) to the public sewerage system.
- 19.No land drainage run-off will be permitted, either directly or indirectly, to discharge into the public sewerage system.
- 20.No development shall commence until the Developer has prepared a scheme for the comprehensive and integrated drainage of the site showing how foul water, surface water and land drainage will be dealt with and this has been submitted to and approved in writing by the local planning authority in liaison with Dwr Cymru Welsh Water's Network Development Consultant. The work shall be carried out in accordance with the approved scheme.
- 21.The development hereby permitted shall be carried out in accordance with the following approved plans: 5347/002/C/200/P1 and location plan.

Richborough Estates

DOCUMENTS SUBMITTED AT THE HEARING

1. Planning Obligation dated 7 February 2017
2. Plan – Route of the Herefordshire Trail
3. Copy of Memo dated 10 March 2016 (Affordable Housing Mix)

APPEARANCES

FOR THE APPELLANT:

Philip Deeley	RCA Regeneration Ltd
Helen Donnelly	DNS Planning
Sian Griffiths MRTPI MRICS	RCA Regeneration Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Fernando Barber-Martinez	Herefordshire Council
Elizabeth Duberley	Herefordshire Council
Mark Tansley	Herefordshire Council

INTERESTED PERSONS:

Matt Hoskins	Bosbury Parish Council
Patrick Whitehead	Bosbury Parish Council
Loris Gunter	Local resident
John Joyce-Townsend	Bosbury Parish Council
Barry Sharples	Local resident
Edward Lock	Local resident