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## Appeal Decision

Site visit made on 2 May 2017

**by Gareth W Thomas BSc(Hons) MSc(Dist) PGDip MRTPI**

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

**Decision date: 1<sup>st</sup> June 2017**

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**Appeal Ref: APP/H1840/W/3166467**

**Land adjacent 90 Bretforton Road, Badsey, Evesham WR11 7XQ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by JBRT Developments against the decision of Wychavon District Council.
  - The application Ref W/16/00953/PN, dated 7 April 2016, was refused by notice dated 29 September 2016.
  - The development proposed is for the erection of 35 dwellings, garages and associated works.
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### Decision

1. The appeal is allowed and planning permission is granted for the erection of 30 dwellings, garages and associated works on land adjacent 90 Bretforton Road, Badsey, Evesham WR11 7XQ in accordance with the terms of the application, Ref W/16/00953/PN, dated 7 April 2016, subject to the conditions set out in the Schedule attached to this decision.

### Preliminary Matters

2. The scheme before me differs from that described in the application form and in the banner heading to this decision. This is due to the scheme evolving during the course of consideration of the application by the Council resulting in a reduction in the number of dwellings from 35 to 30 units. The Council's decision was made on the basis of 30 units and I have considered the appeal on this basis.
  3. During the course of the appeal, a signed Unilateral Undertaking (UU) under Section 106 of the Town and Country Planning Act 1990 dated 12 April 2017 was submitted to the Planning Inspectorate, which provides for affordable housing and the making of financial contributions towards formal sports provision, public open space, transportation, education facilities, recycling and cycling. The Council has been given the opportunity to comment on the UU and has subsequently confirmed that it believes there are technical difficulties concerning the Undertaking. The Council has invited me to consider whether Reasons 2 and 3 as detailed in the decision notice should continue to apply. These reasons essentially revolved around the lack of a signed section 106 Agreement. I have taken the Unilateral Undertaking into account together with the views of the appellant and in so doing I have considered whether it complies with the Community Infrastructure Levy (CIL) Regulations. These matters are considered in my reasoning, set out below.
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4. The appellant contends that there is a fall-back position in that there is an extant planning permission relating to the appeal site that can be implemented. This relates to two previous planning permissions for the erection of a total of 22 dwellings<sup>1</sup>. The Council accepts that the fall-back position represents an important material planning consideration; I would agree with its stance.
5. During my site visit I observed that development was proceeding in accordance with the previous planning permission. However, this does not have any bearing on the development proposal the subject of this appeal.

### **Main Issue**

6. The Council is able to demonstrate a deliverable five year's supply of housing and this is not disputed by the appellant. Accordingly, paragraphs 14 and 49 of the National Planning Policy Framework (the 'Framework') are not engaged.
7. Consequently, the main issues in this appeal are firstly, whether the proposed development would accord with development plan policies aimed at directing development to the most sustainable areas and secondly, whether there are other material considerations, including the fall-back position, which indicate that the proposal should be determined other than in accordance with the development plan.

### **Reasons**

#### Whether in accord with the development plan

8. The development plan includes the South Worcestershire Development Plan (SWDP) adopted in February 2016. Policy SWDP1 sets out the general presumption in favour of sustainable development. SWDP2 sets out the development strategy and settlement hierarchy for the area. This Policy aims to focus most development in urban areas where housing needs and accessibility to lower cost public services are greatest. Badsey is identified as a category 1 settlement and under Policy SWDP2 is deemed suitable to accommodate housing to meet local needs. However although part of the site lies adjacent to the development boundary, it lies wholly outside these limits. Accordingly, such areas are defined as open countryside with the Policy strictly controlling development and limiting development to certain circumstances, none of which apply to this proposal.
9. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that, if regard is to be had to the development plan in the determination of this appeal that determination must be made in accordance with the development plan unless material considerations indicate otherwise. The proposed development is contrary to Policy SWDP2 of the recently adopted development plan and this is acknowledged by the appellant. Furthermore, the proposed development would not fall within any of the categories identified in Part B of that policy.
10. The Framework explains that that development in conflict with an up-to-date development plan should be refused unless other material considerations indicate otherwise and it is to those other considerations I now turn.

#### Other considerations

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<sup>1</sup> Local Planning Authority references W/14/01109/OU and W/13/01909/OU

### *Fall-back position*

11. Whilst it is common ground that the appeal site lies outside the settlement boundary and is thus to be treated as open countryside for planning purposes, it benefits from two planning permissions and associated Reserved Matters approval that provides for a total of 22 dwellings. The Council confirms that these permissions have been partially implemented and so are extant. At my site visit I observed that works pursuant to those permissions are under way and thus this fall-back position is real and not merely theoretical. Given this, I am required to have regard to this fall-back position in considering whether the proposed scheme would be significantly more harmful than the consented scheme.

### *Housing supply*

12. The Council is able to demonstrate a deliverable five year's supply of housing land and this is not challenged by the appellant. As such, paragraph 49 of the Framework sets out that development plan policies relating to the supply of housing are not to be considered 'not up-to-date'.
13. That said, it is also a fundamental aim of the Government's approach to boost significantly the supply of housing in order to assist in the delivery of a wide choice of high quality homes. The 22 houses that can presently be built out at the appeal site currently contribute to the Council's 5 year housing land supply position. However, as confirmed in the officer report, Policy SWDP3 confirms that part of the overall housing land supply comprises the continued delivery of windfall housing sites. Although windfall sites are generally viewed in the Framework as those that have been previously developed, I share the appellant's view that the site is capable of being a windfall site and thereby contributing to the Council's housing land supply. Housing land supply moreover is not static.

### *Accessibility of the site*

14. When considering the previous outline applications, both of which pre-dated the SWDP, the Council explains that it noted that the location of the site was at the eastern limb of the village and positioned some 1km from the core of the village and village school. It was further noted that the site is not connected to the village by a footpath on the southern side of the road. In order to address connectivity issues, the approved schemes included the provision of a footway link along Bretforton Road to the bus stop to the west of the site. This is also included in the appeal scheme.
15. From what I saw at my site visit, the site is reasonably accessible to local services including the village school. Whilst pedestrians would need to cross Bretforton Road to access the footway that accesses the village centre, this did not form an impediment to the previous schemes and would not cause additional problems to the increased number of households that would occupy the additional dwellings proposed in the appeal. The eight additional dwellings do not weigh heavily against the proposal in terms of the site's accessibility to local services.

### *Local services and facilities*

16. The Council acknowledges that new development in rural areas can help support the retention of existing local services and facilities, which is consistent

with the Framework. However I also accept that Badsey has allocated sites for development that is considered sufficient to support such local services and facilities. There is no evidence to suggest that that existing local services and facilities would be under threat in the absence of the additional eight units here. The additional number of dwellings proposed in the appeal scheme would therefore have a neutral effect on the weight in favour of the proposal.

### Other factors

#### *Section 106 Unilateral Undertaking*

17. Paragraph 204 of the Framework, the Planning Practice Guidance and Regulation 122 of the CIL Regulations require that planning obligations should only be sought, and weight attached to their provisions, where they are: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
18. There is a signed and completed UU. It requires the appellant to make financial contributions towards infrastructure as follows: £48,960 for 'off-site formal sports'; £32,142 for 'off-site public open space'; £55,848 for 'highways contribution'; £1,024 for 'recycling'; £10,050 for 'cycling' to provide alternative route linking Badsey and Evesham and Education contributions based on: £849 per 2-bed flat, £2,123 per 2/3 bed dwelling and £3,185 per 4-bed dwelling (excluding affordable units). In addition, provision is made for twelve affordable units to be provided as part of the total 30 residential units. The contribution for 'off-site built sports facilities' contained within the Undertaking is no longer necessary in accordance with the South Worcestershire Developer Contributions Supplementary Planning Document and should be discounted for the purposes of this decision.
19. Support for the contributions in the UU and how they would be spent is set out in the South Worcestershire Infrastructure Delivery Plan, the South Worcestershire Developer Contributions Supplementary Planning Document and the Council's officer report to Planning Committee of 22 September 2016. In terms of affordable housing, a requirement for 40% provision is also set out in the Council's Draft Affordable Housing Supplementary Planning Document and supported by Policy SWDP15. I am satisfied that the proposed contributions are necessary, directly related, and fairly and reasonably related in scale and kind to the proposed development, in accordance with CIL Regulation 122. I have therefore attached weight to them in reaching my decision.
20. Turning to the veracity of the Undertaking, I am content that the UU requirements for affordable housing and financial contributions with the exception of the off-site built sports contributions, the requirement to pay the Council's legal costs and payment of ongoing monitoring costs are necessary to make the development acceptable. It is unusual in the matter of UU for the Council's costs to be met; moreover, the Undertaking was presented as part of the appeal proceedings and therefore made to me. In addition, following a recent High Court decision<sup>2</sup> it was held that an ongoing monitoring fee was not necessary to make the development acceptable monitoring as this was deemed to be part of the function of local planning authorities. I am satisfied that the

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<sup>2</sup> Oxfordshire County Council v SSCLG [EWHC] 186

timing of the payments of contributions as set out in the Schedules to the UU are reasonable.

21. Given my findings in relation to the UU and notwithstanding the Council's suggested approach in its correspondence with the Planning Inspectorate dated 23 May 2017, as I am satisfied that the UU is necessary to make the development acceptable and is in a form that complies with the Council's policies, I need not consider the Council's Reasons 2 and 3 any further.

#### Overall balance and conclusions

22. In accordance with section 38(6) of the Planning and Compulsory Purchase Act 2004, the starting point in this appeal is the SWDP. The location of the site outside the settlement limits would result in conflict with policy SWDP2. Accordingly, the proposal would fail to comply with the development plan.
23. Policy SWDP1 states that where applications do not accord with the development plan the local authority will work with applicants to mitigate adverse impacts and identify sustainable solutions "where possible". I accept that the Council's officers recommended in favour of granting planning permission having regard to the fall-back position. However, the Planning Committee attached limited weight to the fall-back position and did not believe that it should outweigh a recently adopted development plan. The Committee cannot be criticised for departing from the professional recommendation of its officers particularly as the core principles in the Framework is to ensure that planning is genuinely plan-led. But prior to the determination of the application, it is clear that the Council worked towards mitigating the adverse impacts and towards a sustainable solution.
24. The fall-back position is a significant material consideration. No convincing evidence has been presented that demonstrates that material harm would be caused by the additional eight units. In my view, the appeal scheme represents a more efficient use of land and would bring about housing that according to the Council's own evidence as found in the Worcestershire Strategic Housing Market Assessment (SHMA), which clearly indicates a growing demand for smaller units in the District, including smaller general. The officer report pointed to the conclusion that the scheme would represent a good mix of market units and comply with Policy SWDP14. Furthermore 12 units comprising 40% affordable housing would also be provided in compliance with Policy SWDP15, which is an increase by four units over what would have been provided by the extant permission. I attach significant weight to these findings.
25. In addition, the Council has not identified any environmental harm caused by the proposed development despite its location outside the settlement boundary. In fact, the officer report recognised that 41% of the site would be devoted to green infrastructure, a marginal increase over the requirements as set down in Policy SWDP5. The officer concluded that the provision would also be appropriately sited within the site with the layout designed to retain much of the perimeter hedging and vegetation with the green infrastructure split between two central parts of the site and to the rear. I attach significant weight to these findings.
26. The Council refers to the judgement in *East Staffordshire BC v Secretary of State for Communities and Local Government* and *Barwood Strategic Land*

[2016 EWHC 2973]. However, there is no conflict between this judgement and the approach taken in this decision. I fully accept that the SWDP can demonstrate sustainable development, its policies are up-to-date and the fourth bullet point in paragraph 14 is not therefore engaged. However, the overriding material planning consideration comprising the fall-back position in this case is of sufficient weight to justify the grant of planning permission in this case despite the conflict with the development plan. There is also an absence of any further harm.

### Conditions

27. The planning officer's report to Planning Committee set out a number of planning conditions that have been considered against the guidance in the Planning Practice Guidance. I have amended the wording of some conditions in order to aid clarity and deleted one in relation to the requirement for a welcome pack for householders on grounds of necessity. Conditions are imposed specifying the period of commencement of development and to specify approved plans in the interests of providing certainty. Conditions are imposed requiring prior approval and implementation of surface and foul drainage including SuDS in order to protect living conditions. Conditions are attached requiring the provision of electric vehicle charging points and the installation of energy saving heating boilers within individual dwellings in order to meet local authority policies and achieve energy efficiency. A condition is included requiring the provision of cycle storage facilities in order to support alternative modes of transport. A condition is also attached requiring landscape management arrangements to be agreed and thereafter implemented in the interests of character and appearance. Conditions are imposed requiring appropriate visibility splays, the approval of details of estate junction with the B4035 and footway along Bretforton Road together with engineering specifications for access roads and ensuring that vehicular accesses and driveways are suitably hard surfaced in the interests of highway safety and convenience. Conditions are also imposed requiring approval of a Construction Management Plan and limiting the hours when construction activities may take place in order to protect living conditions of occupiers of existing dwellings in the immediate neighbourhood. A condition is necessary to ensure satisfactory ecological mitigation takes place in the interests of biodiversity. On the matter of affordable housing, a condition is deemed necessary in order to secure planning policy objectives. Consequently this would require the prior approval by the Council of the programme for implementation and phasing of the affordable housing scheme to be agreed and for its subsequent implementation.

### Conclusion

28. For the reasons set out above and having regard to all other matters raised, I conclude that this appeal should be allowed.

*Gareth W Thomas*

INSPECTOR

## **SCHEDULE OF CONDITIONS:**

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Bad-SL-01S; Bad-SL-01R-col; Bad-SL-03E; Bad-PD-04F; Bad-PD-05B; Bad-LS-001F; Bad-LS-002F; Bad-PD-60G; Bad-PD-02B; Bad-PD-05D; Bad-PD-10C; Bad-PD-13B; Bad-PD-19C; Bad-PD-20C; Bad-PD-22D; Bad-PD-23E ; Bad-PD-24D; Bad-PD-27B; Bad-PD-28B; Bad-PD-29B; Bad-PD-33A; Bad-PD-34A; Bad-PD-35A; Bad-PD-36; Bad-PD-37; Bad-PD-38; Bad-PD-39B; Bad-PD-41A; Bad-PD-42A; Bad-PD-43; Bad-PD-44; Bad-PD-45 and; Bad-PD-46.
- 3) Prior to the occupation of any of the dwelling houses hereby approved, detailed drainage plans for the disposal of foul and surface water flows shall be submitted to and approved by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details before the development is first brought into use.
- 4) None of the dwellinghouses hereby approved shall be occupied until a Sustainable Urban Drainage Systems (SuDS) management plan which will include details on future management responsibilities, along with maintenance schedules for all SuDS features and associated pipework has been submitted to and approved in writing by the Local Planning Authority. This plan shall detail the strategy that will be followed to facilitate the optimal functionality and performance of the SuDS scheme throughout its lifetime. The approved SuDS management plan shall be implemented in full in accordance with the agreed terms and conditions.
- 5) Appropriate cabling and an outside electrical socket must be supplied for each property to enable ease of installation of an electric vehicle charging point (houses with dedicated parking). For developments with unallocated parking i.e. flats/apartments 1 EV charging point per 10 spaces (as a minimum) should be provided by the developer to be operational at commencement of development. The charging point must comply with BS7671. The socket should comply with BS1363, and must be provided with a locking weatherproof cover if located externally to the building.
- 6) Details shall be submitted to and approved by the local planning authority prior to the first occupation of the development for the installation of Ultra-Low NOx boilers with maximum NOx Emissions less than 40 mg/kWh. The details as approved shall be implemented prior to the first occupation of the development and shall thereafter be permanently retained until renewal. When replaced these shall be replaced with boilers having the same rating.
- 7) Prior to occupation of any dwelling on site, secure cycle parking facilities shall be provided in accordance with details that have been approved in writing by the local planning authority. Such details shall include details of the location, type of rack, spacing, numbers, method of installation and access to the cycle parking. These facilities shall thereafter be retained for the parking of cycles only.

- 8) No part of the development shall be first occupied until a landscape management plan including long-term design objectives, management responsibilities and maintenance schedules for all landscape areas (excluding domestic gardens) has been submitted to and approved in writing by the local planning authority. The agreed management plan shall thereafter remain in force.
- 9) Before any other works hereby approved are commenced, visibility splays shall be provided from a point 0.6m above ground level at the centre of the access to the application site and 2.4 metres back from the nearside edge of the adjoining carriageway, (measured perpendicularly), for a distance of 90 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 and these areas shall thereafter be retained and kept available for visibility purposes at all times.
- 10) Prior to the occupation of any of the dwelling houses hereby approved, details of the estate road junction to B4035 and footway along Bretforton Rd shall be submitted to and approved in writing by the Local Planning Authority. None of the dwellings shall be occupied until the road junction and footway have been constructed in accordance with the approved details.
- 11) Prior to the occupation of the dwelling houses hereby approved, the engineering details and specification of the proposed residential road, footways, culvert and highway drains shall be submitted to and approved in writing by the local planning authority. None of the dwellings shall be occupied until the road/footway from Bretforton Road to serve the individual dwelling have been constructed have been constructed in accordance with the approved details.
- 12) The dwellings hereby permitted shall not be occupied until the individual vehicular accesses and driveways, private shared driveways, turning areas and vehicle and cycle parking facilities shown on the approved plan have been properly consolidated, surfaced, drained and otherwise constructed in accordance with details to be submitted and approved in writing to the local planning authority and these areas shall thereafter be retained and kept available for those users at all times.
- 13) The development hereby permitted shall not begin until a Construction Method Statement has been submitted to and approved in writing by the local planning authority. The approved statement shall be adhered to throughout the construction period.
- 14) Demolition, clearance or construction work and deliveries to and from the site in connection with the development hereby approved shall only take place between the hours of 08.00 and 18.00hrs Monday to Friday and 08.00 and 13.00hrs on a Saturday. There shall be no demolition, clearance or construction work or deliveries to and from the site on Sundays or Bank/Public Holidays.
- 15) Prior to the commencement of the development hereby permitted a detailed ecological mitigation and enhancement scheme shall be submitted to and approved in writing by the local planning authority. This shall include suitable precautionary measures in respect of amphibians, mammals and birds, details of bat roosting and bird nesting features,



enhancement for amphibians, external lighting in relation to site boundaries and new roosts, an implementation timetable as well details of long term management. The approved ecological mitigation and enhancement scheme thereafter be carried out in accordance with the approved details and timetable and managed in accordance with the approved management details.

- 16) Prior to the commencement of development hereby permitted details of the phasing and implementation programme of the Affordable Housing Scheme shall be submitted to and approved in writing by the local planning authority. The Housing Scheme shall be implemented in accordance with the approved details.

- **END OF SCHEDULE** -

Richborough Estates