



Appeal Decision

Site visit made on 11 July 2016

by **Jonathan Manning BSc (Hons) MA MRTPI**

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

Decision date: 5 August 2016

Appeal Ref: APP/J1860/W/15/3139020

Land at Lower Howsell Road, Lower Howsell, Malvern, Worcestershire

- 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 outline planning permission.
 - The appeal is made by Halkin Development Limited against Malvern Hills District Council.
 - The application Ref 14/01231/OUT, is dated 22 August 2014.
 - The development proposed is the erection of up to 110 dwellinghouses and means of access.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of up to 110 dwellinghouses and means of access, at Land at Lower Howsell Road, Lower Howsell, Malvern, Worcestershire, in accordance with the terms of application Ref: 14/01231/OUT, dated 22 August 2014, subject to the conditions in the attached schedule.

Preliminary Matters

2. The Council has set out that had it been in a position to determine the planning application that it would have recommended approval, subject to a legal agreement and planning conditions. The Council has, however, raised several concerns in relation to the Unilateral Undertaking (UU) that has been provided by the appellant as part of the appeal process. In addition, the appellant has raised concern with regard to a number of financial contributions that are being sought by the Council.
3. The proposal seeks outline planning permission, with all matters reserved except for access. Whilst, all other matters are reserved for future consideration, I have been provided with indicative drawings that relate to: a site masterplan, a site layout plan and two surface water management options. I have had regard to these drawings.

Main Issues

4. Having regard to the preliminary matters set out above, I consider that the main issues of the appeal are: whether the proposal makes appropriate provision for affordable housing; and whether the proposal is required to make provision for other planning obligations.
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Reasons

Affordable housing

5. The appellant accepts that the proposal should make provision for 40% affordable housing, in accordance with Policy SWDP15 of the South Worcestershire Development Plan (2016) (the SWDP). The appellant and the Council are, however, in disagreement over the level of tenure split and whether the proposal should provide for affordable rented housing or social rented housing. Policy SWDP15 (E) sets out that *'The final tenure mix of affordable housing in individual sites will be subject to negotiation. Generally the preference will be for social rented, unless for example a contribution from an alternative affordable housing tenure is required to achieve scheme viability or local need has been demonstrated for a different affordable housing tenure'*.
6. The appellant is of the view that affordable rented housing is more attractive to providers and there is a clear demand for such accommodation. The appellant has not provided any viability evidence to suggest that providing social rented housing would make the scheme unviable. Further to this, the Worcestershire Strategic Housing Market Assessment (SHMA) (2012) identifies at Paragraph 7.80 that *'The analysis indicates that across Worcestershire there is a requirement for an additional 1,086 additional units of social rented housing and 269 intermediate housing units on an annual basis in order to meet affordable housing need over the next five years. This equates to a split of 80%:20% in favour of social rented housing'*. In addition, the SHMA also identifies at Paragraph 7.82 that Malvern Hills records a strong tenure split in favour of social housing (97%). The appellant has not provided any substantive evidence to demonstrate that this information is out-of-date or that Council's future needs have significantly changed.
7. Whilst acknowledging the reasons put forward by the appellant for providing affordable rented housing and the support of a potential provider, I must determine the appeal in accordance with the development plan, unless material considerations indicate otherwise. Given all of the above, in my view, there are no compelling reasons to depart from the requirements and preferences of Policy SWDP15 of the SWDP. Therefore, bearing in mind the findings of the SHMA, I consider that an 80/20 percent split of social rented housing to shared ownership units is appropriate in this case. The appellant has provided a signed and dated UU that allows for several options to be implemented depending on my findings. I consider that, in conclusion, 'Affordable Housing Option 3' is the most appropriate in this case and can be secured by the UU. This complies with Policy SWDP15 of the SWDP and meets the three tests set out in Paragraph 204 of the National Planning Policy Framework (the Framework) for planning obligations, which reflect those set out in Regulation 122 of the Community Infrastructure Levy (CIL) (2010).
8. The Council has set out that the definition of affordable housing is not acceptable in the UU. However, I consider that the UU, in its entirety, is sufficient to suitably secure appropriate affordable housing as part of the scheme.

Other planning obligations

9. The appellant is of the view that several of the planning obligations being sought by the Council do not comply with the three tests set out in Paragraph

204 of the Framework for planning obligations and CIL Regulation 122. The Framework sets out that planning obligations should only be sought 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. All three tests must be met.

10. The appellant's first concern relates to the financial contribution sought by Worcestershire County Council (WCC) for highway improvements at Powick. This is on the basis that the improvements would be located some distance (approximately 4 miles) from the appeal site. However, I am of the view that it is highly likely that future occupiers of the proposal when travelling by car to Worcester would utilise this route and are likely to do so frequently. I consider that the additional traffic would therefore have an additional impact on the highway where the improvements are being sought. Consequently and having regard to the evidence provided by WCC, I consider that the sought highway improvements at Powick meet the above three tests. Further, there is no reason for me to believe that sought highway improvements would conflict with CIL Regulation 123, in terms of the pooled resources limit. This is because the Council's compliance statement suggests that the financial contribution would secure the improvements, rather than being pooled (with other contributions) towards the cost of them.
11. The other planning obligations in dispute relate to sought financial contributions for public open space, sport and recreation. This relates to the provision of outdoor pitches and indoor facilities at Langland Stadium and youth and community facilities, as well as outdoor sports at Malvern Cube. Policy SWDP 39 of the SWDP sets out that the requirements for new and improved formal sports pitches will be assessed on a case by case basis, using the most up-to-date available evidence. In support of the planning application, the appellant undertook an Open Space Assessment, which found that there were no shortfalls in the area for either public open space or playing pitches. The Council has not provided any evidence to challenge the findings of the assessment. Given this, there is very little evidence before me to suggest that the development would have any significant impact or place unacceptable strain on public open space, sport and recreation facilities in the area.
12. Notwithstanding this, I do accept that the development to some degree would increase the need for such facilities and the appellant is prepared to provide a new Trim Trail and Play Equipment at Lower Howsell Playing Fields and a new concrete bowl skateboard facility at Victoria Park, some 0.3 miles from the appeal site. I also acknowledge that some of the residents may well utilise the facilities at Langland Stadium and Malvern Cube, but such usage would likely be fairly limited and in my view would not justify financial contributions of £331,680 for Langland Stadium and £42,000 at Malvern Cube, to mitigate any limited extra usage of the facilities. This is particularly bearing in mind the other more local additional facilities that the appellant accepts are necessary to make the proposal acceptable in planning terms. I am also mindful that the SWDP and the Council's Infrastructure Delivery Plan does not identify any need for contributions from the appeal site to these facilities.
13. Consequently, from the evidence that I have before me, I am not satisfied that the sought financial contributions at Langland Stadium and Malvern Cube are necessary to make the proposal acceptable in planning terms or are related in scale and kind to the development. Given this, I consider that the sought

contributions do not comply with all three tests of Paragraph 204 of the Framework and CIL Regulation 122 and should not be required.

14. For the avoidance of doubt, I have also considered all other sought planning obligations, which are not disputed by the appellant. I consider that each of these meets the three tests and comply with the Framework, CIL Regulation 122 and where applicable CIL Regulation 123.

Other matters

15. Interested parties have raised a significant amount of other concerns. Particular emphasis has been placed on highway and pedestrian safety concerns. There is a substantial amount of evidence that has been prepared by the appellant on this matter and I understand that the Highway Authority requested additional work to be undertaken to overcome its initial concerns, including an independent review of the evidence. I have considered the evidence on highway and pedestrian safety and I concur with the appellant and the Council that the proposal would not be unacceptable in this regard. As part of the appeal consultation an interested party has suggested that access would be better gained from an alternative location. However, I must consider the application that is before me and in any event, I am of the view that the proposed access onto Lower Howsell Road is acceptable.
16. Concerns have also been raised in relation to: flood risk, drainage, landscape harm, visual impact, living conditions (loss of privacy and loss of light), ecology, the level of existing infrastructure, loss of open space, loss of farmland, effect on listed buildings and air pollution from increased vehicles. I have considered each of these matters carefully and I consider that with the imposition of appropriate planning conditions, the proposal would be acceptable in relation to all of the above matters. I am also mindful that the Council share this view.
17. Several other concerns have been raised with regard to the indicative layout of the scheme. However, I am mindful that layout is a reserved matter for detailed consideration at a later date, where I consider that any potential concerns can be suitably addressed.
18. It is also important to note at this point, that the site is allocated under Policy SWDP52 (i) within the adopted SWDP for the delivery of up to 110 dwellings. The scheme would therefore follow a plan-led approach, as advocated by the Framework.

Conditions

19. I have considered the Council's suggested conditions against the tests set out within the Framework and the advice provided by the Government's Planning Practice Guidance (the PPG) and have amended them where required. As well as the standard outline permission conditions, a condition is necessary to ensure the development is undertaken in accordance with the relevant approved plans, to secure certainty. The appellant has contested the time limits for the implementation of the development set out within the Council's suggested conditions. The appellant wishes to have up to three years from the date of this permission to submit the applications for approval of the reserved matters and a further two years to begin the development following the approval of the last of the reserved matters. This could result in development

- not coming forward for 5 years on the site. Given that there are not any complex infrastructure matters to resolve, I see no reason why development could not be delivered within three years of this decision. I have therefore amended the condition to require that the applications for reserved matters are made within two years of this decision and that the development shall be begun either within three years of this decision or within one year of the approval of the last of the reserved matters, whichever is the latest.
20. The Council has suggested a condition that requires any application for the approval of reserved matters to have regard to the Design and Access Statement. However, the Council hold the power to approve the reserved matters application and can require such details. There is therefore no need to have a condition to this effect. In addition, the suggested condition also requires an updated Design and Access Statement to be provided. I am not clear why this is required to make the development acceptable. Consequently, I have not imposed the condition.
21. Conditions (4) and (5) secure suitable public open space and the children's play area as part of the development. Conditions (6) – (8) are necessary to secure the suitable appearance of the scheme. The Council had suggested a condition requiring the details of the boundary treatments for each individual plot to be provided. However, I consider that this requirement would be best secured as part of the landscaping scheme. Conditions (9) and (10) protect the living conditions of neighbouring residents.
22. Conditions (11) and (12) are to prevent increased flood risk, both of the site and its surroundings. Condition (13) protects future occupants, neighbouring residents and the environment from any potential contamination found on the site. This condition has been contested by the appellant. However, Worcestershire Regulatory Services in its consultation response has noted that there may be contamination on the site associated with its previous agricultural use and from past allotments. I have therefore imposed the condition.
23. Conditions (14) – (17) are to protect ecological features. Conditions (18) and (19) are necessary for the protection of trees. Conditions (20) – (25) are imposed to secure a sustainable form of development. Conditions (26) and (27) are for highway safety. Condition (28) ensures that there would be no adverse impacts to or from the nearby Household Recycling Centre. Condition (29) secures a suitable housing mix. The appellant is of the view that the wording suggested by the Council for Condition (29) is overly onerous. However, the Council's SHMA identifies a need for a greater number of smaller units. Policy SWDP 14 of the SWDP sets out that the mix should be informed by the latest SHMA. I consider that the mix proposed by the Council is therefore acceptable. Notwithstanding this, I acknowledge that requirements could change in the future. Therefore, I have amended the condition to offer an element of flexibility to be achieved if there is a demonstrable change in need when the reserved matters are approved, for example, if a new SHMA is produced.
24. A number of the above imposed conditions relate to pre-commencement activities. In each case, I am satisfied that the requirement of the conditions are necessary to make the development acceptable in planning terms and it would have been otherwise necessary to refuse planning permission.

Conclusion

25. For the reasons set out above and having regard to all other matters raised, including the concerns of local residents, I consider that the proposal represents sustainable development and accords with the development plan. The appeal is therefore allowed and planning permission is granted, subject to necessary planning conditions.

Jonathan Manning

INSPECTOR

Richborough Estates

Schedule of Planning Conditions

- 1) Application for the approval of the matters reserved by conditions of this permission shall be made to the local planning authority before the expiration of two years from the date of this permission. The development hereby permitted shall be begun not later than whichever is the latest of the following dates:
 - i. The expiration of three years from the date of this permission; or
 - ii. The expiration of one year from the approval of the reserved matters. In the case of approval on different dates, this means the date of the approval of the last reserved matter.
- 2) Approval of the details of the appearance, landscaping, layout and scale (the reserved matters) shall be obtained from the local planning authority in writing before any development is commenced.
- 3) The development hereby approved shall be carried out in accordance with the following drawings: Site Location Plan (Scale 1:2500) and BMT/2029/002 Rev P6 (Junction Access Design).
- 4) Any application for the approval of reserved matters related to layout shall include the provision of no less than 40% of the site area for Public Open Space purposes.
- 5) Prior to the commencement of development, details of an equipped children's play area, to include the location and design of a local area of Equipped Play (LEAP), as well as details of the proposed play equipment, shall be submitted to and approved in writing by the local planning authority. The LEAP shall be installed and completed in accordance with the approved details and in accordance with a timetable that has also been submitted to and approved in writing by the local planning authority.
- 6) A landscaping scheme shall be submitted to and approved in writing by the local planning authority, as part of the reserved matters in accordance with condition 2. This shall include details of all boundary treatments (including for individual plots), screen walls, fences, surface treatments to drives, cycle and footways, tree and shrub planting with provision for tree planting to be carried out concurrently with the development and completed within 1 year of substantial completion of the development. If within a period of 5 years from the date of the planting of any tree planted that tree, or any tree planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes seriously damaged or defective, another tree of the same species and size as that originally planted shall be planted at the same place, unless the local planning authority gives its written approval to any variation.
- 7) The submission of reserved matters shall be accompanied by 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 submitted to and approved in writing by the local planning authority and shall be implemented as approved.

- 8) Any reserved matters applications submitted in response to condition 2 of this permission shall include details of the levels of the existing site, the proposed slab levels of the dwellings and a datum point outside of the site.
- 9) No development shall take place, including any works of demolition, 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. The Statement shall provide for:
- i. the parking of vehicles of site operatives and visitors;
 - ii. loading and unloading of plant and materials;
 - iii. storage of plant and materials used in constructing the development;
 - iv. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - v. wheel washing facilities;
 - vi. measures to control the emission of dust and dirt during construction; and
 - vii. a scheme for recycling/disposing of waste resulting from demolition and construction works.
- 10) No demolition, ground works or construction work shall take place outside of the following hours: 07.30 to 18.00 Mondays to Fridays; 07.30 to 13.00 on Saturdays; and no such work shall take place on Sundays or Public/Bank Holidays.
- 11) No development shall take place until a scheme for the management of surface water has been submitted to and approved in writing by the local planning authority. The scheme shall be accompanied by an assessment into the potential of disposing of surface water by means of a sustainable drainage system (SuDS) and the results of this assessment shall be submitted to and approved in writing by the local planning authority. If infiltration techniques are used then the scheme shall include the details of field percolation tests. There shall be no increase in surface water run-off from the site compared to the existing pre-application run-off rate up to a 1 in 100 year storm event plus an appropriate allowance for climate change. The scheme shall provide an appropriate level of run-off treatment. The scheme shall be implemented in accordance with the approved details before the development is first brought into use. Where a sustainable drainage scheme is to be provided, the submitted details shall:
- i. provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters; including a timetable for its implementation; and

- ii. provide a management and maintenance plan for the lifetime of the development which shall include robust arrangements to secure the operation of the scheme throughout its lifetime.
- 12) As part of any reserved matters application submitted in accordance with condition 2 of this consent, details of foul drainage works (including Hydraulic Modelling) shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and retained thereafter.
 - 13) Other than development required to be carried out as part of an approved scheme of remediation, no other development must commence until parts 1 to 6 of this condition has been complied with:
 1. A preliminary risk assessment must be carried out. This study shall take the form of a Phase I desk study and site walkover and shall include the identification of previous site uses, potential contaminants that might reasonably be expected given those uses and any other relevant information. The preliminary risk assessment report shall contain a diagrammatical representation (conceptual model) based on the information above and shall include all potential contaminants, sources and receptors to determine whether a site investigation is required and this should be detailed in a report supplied to the local planning authority. The risk assessment must be approved in writing before any development takes place.
 2. Where an unacceptable risk is identified a scheme for detailed site investigation must be submitted to and approved in writing by the local planning authority prior to being undertaken. The scheme must be designed to assess the nature and extent of any contamination and must be led by the findings of the preliminary risk assessment. The investigation and risk assessment scheme must be compiled by competent persons and must be designed in accordance with DEFRA and the Environment Agency's "Model Procedures for the Management of Contaminated Land, CLR11".
 3. Detailed site investigation and risk assessment must be undertaken and a written report of the findings produced. This report must be approved by the local planning authority prior to any development taking place. The investigation and risk assessment must be undertaken by competent persons and must be conducted in accordance with DEFRA and the Environment Agency's "Model Procedures for the Management of Contaminated Land, CLR11".
 4. Where identified as necessary a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to identified receptors must be prepared, submitted and approved in writing by the local planning authority, in advance of it being undertaken. The remediation scheme must ensure that the site will not qualify as Contaminated Land under Part 2A Environmental Protection Act 1990, in relation to the intended use of the land after remediation.

5. The approved remediation scheme must be carried out in accordance with the agreed details prior to the commencement of development, other than that required to carry out remediation.
6. Following the completion of the measures identified in the approved remediation scheme a validation report that demonstrates the effectiveness of the remediation carried out must be produced, submitted and approved in writing by the local planning authority prior to the occupation of any buildings.

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken and where necessary a remediation scheme must be prepared, submitted and approved in writing by the local planning authority. Following the completion of any measures identified in the approved remediation scheme a validation report must be prepared, submitted and approved in writing by the local planning authority prior to the occupation of any buildings.

- 14) Prior to the commencement of the development hereby approved, a specification (including methodology and programme of implementation) for the enhancement of biodiversity through the provision of features as identified within Section 5.3 of the Bat Survey, Section 5.3 of the Reptile Survey and Section 5.5 of the Preliminary Ecological Report (all submitted in support of the application) shall be submitted to and approved in writing by the local planning authority. The works shall be carried out as approved and in accordance with the approved programme of implementation.
- 15) Any reserved matters applications required by condition 2 of this permission, shall have regard to and incorporate the mitigation measures identified either within Section 5.2 of the supporting Reptile Survey or any updated survey which has subsequently been submitted to and approved in writing by the local planning authority.
- 16) Prior to the commencement of the development details of a proposed Slow Worm Mitigation Strategy, including details of a four year post construction monitoring assessment, shall be submitted to and approved in writing by the local planning authority. The development shall be undertaken in accordance with the approved details.
- 17) Prior to the commencement of development, an external lighting scheme shall be submitted to and approved in writing by the local planning authority. The scheme shall be designed in accordance with the recommendations contained within Section 5.2 of the submitted Bat Survey. The development shall be carried out in accordance with the approved scheme.
- 18) The existing trees shown to be retained on the Tree Survey submitted in support of the development hereby permitted, 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 removed without such consent, die or are seriously damaged or diseased during that period shall be replaced with healthy trees of a similar size and species in the next planting season.

- 19) No demolition, site clearance or building operations of any type shall commence until a protective fence (of at least 2 metres in height and in all other respects in accordance with BS 5837 (2012) *Trees in Relation to Design, Demolition and Construction* and previously approved in writing by the local planning authority), has been erected around the trees to be retained within the site and around those trees outside the site whose Root Protection Areas (RPA) (as defined in BS 5837 (2012)) fall within the site, at the outer limit (or beyond) of the their RPA or in a position agreed in writing by the local planning authority. The tree protective fencing shall remain in place until all construction and associated ground-works have been completed.
- 20) Prior to the commencement of the development details and specifications of a pedestrian and cycle link between the northeast corner of the site and the adjacent land to the north shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved scheme.
- 21) Prior to the commencement of development, details of sustainability measures (including energy, waste, recycling and water management) to be incorporated into the design of the dwellings hereby approved, to reduce energy usage and running costs for future occupiers shall be submitted to and approved in writing by the local planning authority. The approved details shall be implemented and retained thereafter.
- 22) An outside electrical socket shall be supplied at each property to enable ease of installation of an electric vehicle charging point, before it is first occupied. The charging point must comply with BS7671 and the socket must comply with BS1363, and must be provided with a locking weatherproof cover if located externally to the building.
- 23) Prior to the commencement of the development, proposed utilities connections to all residential dwellings upon the site should facilitate super-fast broadband connectivity (landline, mobile and wi-fi) including fibre optic rather than copper cabling, where practicable, in accordance with a scheme to be submitted to and approved in writing by the local planning authority. The approved details shall be implemented and retained thereafter.
- 24) Any reserved matters applications submitted in response to condition 2 of this permission shall incorporate details of facilities that allow occupiers to separate and store waste for recycling and recovery.
- 25) The development hereby permitted shall not be brought into use until a Travel Plan that promotes sustainable forms of access to the site has been submitted to and approved in writing by the local planning authority. Development shall be undertaken in accordance with the approved details.
- 26) No other development shall commence until visibility splays have been provided on each side of the proposed access on a line joining a point 2.4

metres back from the nearside edge of the adjoining carriageway measured along the centreline of the access, to a point 54 metres in each direction measured along the nearside edge of the carriageway from the centre of the new access. Nothing shall be planted, erected and/or allowed to grow which exceeds a height of 0.6 metres on the triangular area of land so formed in order not to obstruct the visibility described above.

- 27) Prior to the commencement of the development, engineering details of the access arrangement shown on Drawing BMT/2029/002 Rev P6 shall be submitted and approved in writing by the local planning authority. The development shall not be occupied until the scheme has been constructed in accordance with the approved details.
- 28) Prior to the commencement of the development, an assessment shall be submitted to and approved in writing by the local planning authority providing details of potential impact, (in terms of bioaerosols and other emissions including dust, odours and fumes) that the existing Newland Household Recycling Centre may have upon the proposed development. This assessment should consider both during construction and after occupation of the development. The submitted details shall also set out any mitigation measures necessary to enable the proposed development to co-exist with the existing waste management facility. Thereafter the development shall be carried out in accordance with the approved details.
- 29) As part of any reserved matters applications, a minimum of 65% of the total number of market dwellings proposed shall have a mixture of 1 and/or 2 and 3 bedrooms, and, a maximum of 35% of the open market dwellings proposed shall have 4 or 4+ bedrooms. This shall be required, unless there is a demonstrable need for an alternative housing mix at the time of approval of the reserved matters.