



Appeal Decision

Hearing held on 8 May 2019

Site visit made on 8 May 2019

by Robert Parker BSc (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 June 2019

Appeal Ref: APP/J1860/W/18/3213791

Land off Mistletoe Row, Oldwood Road, Tenbury Wells

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Ms Sophie Bell of Sanctuary Group against Malvern Hills District Council.
 - The application Ref 18/00045/FUL, is dated 20 December 2017.
 - The development proposed is residential development to provide 72 dwellings accessed from Mistletoe Row and including open space, landscaping and ancillary infrastructure.
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Decision

1. The appeal is allowed and planning permission is granted for residential development to provide 72 dwellings accessed from Mistletoe Row and including open space, landscaping and ancillary infrastructure at Land off Mistletoe Row, Oldwood Road, Tenbury Wells in accordance with the terms of the application, Ref 18/00045/FUL, dated 20 December 2017, subject to the conditions set out in the attached schedule.

Procedural Matters

2. The Council did not determine the application. However, it has confirmed that, had it been in a position to do so, it would have refused planning permission for reasons relating to the mix of market housing on the site.
3. A draft Unilateral Undertaking (UU) was submitted at the hearing. The text of this document had already been substantially agreed between the parties. A signed version was provided after the close of the event and the Council has since confirmed its acceptance of this.
4. Subsequent to the site visit, the Highway Authority was invited to clarify its requested highway improvements. Additional information has been provided in writing and this has informed my judgement on whether the planning obligations within the UU meet the statutory tests. I shall return to this later in my decision.

Main Issue

5. The main issue is whether the proposal would provide an appropriate mix of market housing.

Reasons

6. The appeal site comprises 4.5 ha of arable land on the south-western edge of Tenbury Wells. Planning permission has already been granted at appeal for housing on the site. Reserved matters were approved in 2015 but the scheme was never implemented; it is common ground that there is no fallback position. Notwithstanding the lack of an extant permission, the majority of the site is allocated for 44 dwellings in the South Worcestershire Development Plan¹ (SWDP). Although the current proposal takes in additional land, this is purely for the purposes of landscaping and open space and the Council has no objection to the principle of development or the increase in the number of dwellings being proposed. Its sole concern is the mix of market housing on the site. The size composition of the affordable element is deemed to be acceptable and I have no reason to disagree.
7. The Council's position is that the market housing should accord with the mix proportions set out under Note 2 – Market Housing Mix Position Statement (May 2017) of the adopted South Worcestershire Design Guide Supplementary Planning Document (March 2018) (SPD), as underpinned by Policy SWDP14 of the SWDP. The latter seeks a mix of types and sizes of market housing on all new residential developments of five or more units, having regard to location, site size and scheme viability. According to the policy wording, the mix will be informed by the latest Strategic Housing Market Assessment and/or other local data, for example, Neighbourhood Plans, Parish Surveys, Parish Plans and developers' assessments.
8. The supporting text for Policy SWDP14 refers to the 2012 Strategic Housing Market Assessment (SHMA) which the parties agree is still the latest version. This identifies a rising demand for smaller properties, fuelled by a projected growth in one-person and couple households. However, there is also a sustained demand for larger family homes. The SPD suggests (at paragraph 9.2.2) that the focus for new residential development should be on the provision of 1, 2 and 3 bedroom dwellings, with other bed sizes provided in lesser amounts.
9. The appeal scheme would contain 43 market homes, broken down into 4 No. 2-bed dwellings, 24 No. 3-bed dwellings and 15 No. dwellings with 4 or more bedrooms. Applying the SPD mix², this represents a deficiency of 11 No. 2-bed units and a surplus of 9 No. 3-bed units and 2 No. 4+ bed units. The bias towards 3-bed units is at variance with what is being sought within the SPD. The key question for me to consider is the weight to be attributed to such variance when applying the planning balance.
10. My attention has been drawn to the judgment of *William Davis Ltd & others v Charnwood Borough Council* [2017] EWHC 3006 (Admin). In that case, the court quashed the Council's housing mix policy on the basis that it should have been adopted as part of a Development Plan Document requiring independent examination by the Secretary of State, instead of a Supplementary Planning Document, which only requires consultation. The housing mix policy was also found to be unlawful due to the failure of the Council to undertake a viability assessment of the policy before the SPD was adopted.

¹ Policy SWDP57A

² 35% 1 and 2 bedroom, 35% 3 bedroom and 30% 4 and 4plus bedroom

11. It seems to me that there are close parallels with the circumstances of the current appeal. Notwithstanding their origins in statistical data, the Council's housing mix aspirations have not been explicitly examined, neither do I have any evidence to indicate that they have been subject to viability testing at a policy formulation level. The SPD has not been challenged in the courts, but had it been there is a reasonable probability that it would have been found to be unlawful, in line with the court's findings on the *William Davis* case. This diminishes the weight that I can attach to the SPD, albeit its provisions in respect of market housing mix remain a material consideration.
12. The appellant has carried out 'sensitivity analysis' which indicates that the SPD housing mix would not be deliverable in economic terms without either reducing the number of affordable homes on the site or significantly altering the tenure mix in favour of shared-ownership. Both would go against the ethos of Sanctuary Group as a social landlord. Although the sensitivity analysis cannot be given the same weight as a viability assessment reflecting the recommended approach in national planning guidance, I have no reason to question its accuracy, and therefore it is a material consideration to which I can attach some weight.
13. Local estate agents have advised that the most active area of the market is for buyers looking to purchase 3-bedroom homes, with the most popular price bracket being from £200,000 to £275,000. Those agents interviewed felt there was a limited demand for new-build 2-bedroom homes for open market sale. This was thought to be due to the fairly narrow price differential between 2-bedroom and 3-bedroom properties and the additional premium attached to new home prices. The feeling amongst agents was that many buyers who are unable to afford a new 3-bedroom home might choose to buy a second hand 3-bedroom property rather than a new 2-bedroom property. This would be seen as potentially better value and a more sensible entry point for young families wishing to future-proof their investment.
14. There is some internal inconsistency within the appellant's own evidence. The estate agent research does not align with the marketing report supplied by Connells. There could be several reasons for this, including the small data sample used within the latter document. However, the evidence is consistent in pointing to the greatest demand in the Tenbury Wells being for 2, 3 and 4 bedroom properties. The appeal proposal would deliver in this regard, far more so than the adjacent David Wilson Homes scheme which consists of predominantly larger 4 and 5 bedroom family homes. Ultimately, it is unlikely that the appellant would choose to promote a scheme which would not sell. It therefore follows that the housing mix being proposed is the one most probable, in the eyes of the developer, to find buyers.
15. The appellant's frustration lies partly in the fact that the Council did not flag up the latest housing mix position statement at the pre-application stage. The scheme had been designed to accord with an earlier position statement. Whilst I accept that it is not unusual for circumstances to change in the gestation of a development scheme, it is incumbent upon all parties to be proactive. All the evidence points to the appellant having engaged positively and in good faith with the local planning authority, in line with paragraph 39 of the National Planning Policy Framework (the Framework). The Planning Practice Guidance (PPG) states that pre-application advice can be taken into account and given weight in the planning application process. It has not been decisive in this case, but it is nevertheless a factor weighing in favour of the proposal.

16. I have noted the Council's concerns regarding the lack of robust evidence on viability. In my view, it would have been helpful for the appellant to produce such information for the local planning authority's consideration, particularly given the reference to scheme viability in the policy wording. Nevertheless, the evidence before me is sufficient to justify the housing mix being proposed and therefore the lack of a viability assessment should not prove fatal to the appeal.
17. Drawing matters together, the appeal scheme would provide a mix of 2, 3 and 4 bedroom market homes and would thus accord with Policy SWDP14. It would contribute towards meeting the housing needs of the Tenbury Wells area and the objective of creating mixed and balanced communities. Although the proposal does not address the Council's aspiration for a greater number of 2-bedroom market homes, by the authority's own admission the SPD is only guidance. Policy SWDP14 is not prescriptive and therefore, to my mind, the conflict with the SPD does not, in and of itself, bring the scheme into conflict with the development plan taken as a whole. The Council accepts that it has no other objections to the scheme and consequently I find that a grant of planning permission is appropriate.

Other Matters

18. Residents have raised concerns regarding the principle of building on this greenfield site. However, the fact that the land is allocated for housing must carry significant weight. The scheme proposes more dwellings than indicated within the relevant development plan policy, but this does not give rise to any material planning objections, given that there is the capacity to accommodate an increased density without extending the built footprint.
19. Whilst I note the concerns regarding the adequacy of education infrastructure, there is no information to indicate that school capacity is insufficient. Tenbury Wells is the main urban settlement within this part of the district, and it provides a range of services and employment opportunities to support development on the scale proposed.
20. The design and layout of the public open space and footpaths within the scheme is acceptable. Future maintenance can be secured by means of a planning condition. Whilst I note the concerns regarding drainage, there is no substantive evidence to demonstrate that the proposed foul and surface water drainage strategy would give rise to flooding or pollution.
21. I have had regard to all other matters raised, but none is of such strength or significance as to alter my overall conclusions.

Unilateral Undertaking

22. The submitted UU makes provision for 40% of the proposed dwellings to be affordable, in accordance with SWDP Policy SWDP15. It also secures financial contributions towards open space facilities and various highway improvements to encourage walking, cycling and use of public transport.
23. Having regard to the information provided, I consider that the planning obligations within the UU are necessary, directly related to the development and fairly and reasonably related in scale and kind to the development. As such, they comply with the provisions of Regulation 122 of the Community Infrastructure Levy Regulations 2010 and the tests set out within paragraph 56 of the Framework.

Conditions

24. The Council's suggested conditions were discussed at the hearing and various consequential amendments and additions have since been agreed between the parties. I have considered each of the conditions against the tests set out in paragraph 55 of the Framework and within the PPG.
25. In addition to the standard time limit for commencement, I have attached a condition specifying the approved plans, in the interests of certainty. To ensure that the development contributes to the conservation and enhancement of biodiversity, a condition is needed to secure an ecological mitigation and enhancement scheme. In the interests of highway safety and to prevent flooding, pre-commencement conditions are necessary to require submission of details of foul and surface water drainage and engineering drawings of roads and highway drains.
26. Pre-commencement conditions are also needed to secure archaeological investigation and the submission of a Construction Environment Management Plan. These are necessary in the interests of recording heritage assets and protecting the safety and living conditions of existing residents and those moving into the scheme whilst development is still ongoing. A condition restricting construction hours will minimise noise and disturbance.
27. To ensure that the development does not have an adverse impact on the character and appearance of the area, conditions are needed in relation to floor slab levels, materials, landscaping and tree protection, external lighting and boundary treatments. The Council indicated that it is unlikely to adopt landscaped areas and therefore the details will need to include a scheme for long term maintenance.
28. It is important that future residents have safe access and egress to their dwelling during the construction period, including provision for parking, and therefore I have imposed a phased condition which secures this objective. The condition also requires the provision of construction details and a timetable for the highway works to ensure that they are completed in a timely fashion. To encourage residents to use sustainable transport modes there will also need to be a requirement for sheltered and secure cycle parking which shall be provided prior to the occupation of each plot.
29. The Council has specific development plan policies on telecommunications and broadband facilities, low carbon and renewable energy and water efficiency. Conditions are necessary to ensure that the requirements of these policies are met. The suggested condition relating to electric vehicle charging points is not unreasonable in view of development plan policy on avoiding adverse impacts from pollution.
30. A condition is suggested which would require the submission and implementation of an Employment, Skills and Local Procurement Strategy. This is reasonable having regard to the Developer Contributions Supplementary Planning Document (2016) which seeks to ensure, amongst other things, that South Worcestershire residents and businesses can access the employment, skills and economic opportunities generated by major development. The parties agreed that the trigger for submission of details should be more flexible to allow for letting subcontracts.

Conclusion

31. For the reasons given above, I conclude that the appeal should be allowed and planning permission granted.

Robert Parker

INSPECTOR

Richborough Estates

APPEARANCES

FOR THE APPELLANT:

Thea Osmund-Smith	Barrister instructed on behalf of the appellant
Michael Jones	Brandon Planning and Development Ltd
Mark Battin	Sanctuary Group
Jonathan Mullins	Sanctuary Group

FOR THE LOCAL PLANNING AUTHORITY:

Hugh Richards	Barrister instructed by the Council
Duncan Rudge	Planning Services Manager
Simon Rowles	Senior Planning Officer
Denise Duggan	Senior Planning Officer (Policy)

Documents submitted at the hearing

1. Amended site layout (Revision B)
2. *William Davis Ltd & others v Charnwood Borough Council* [2017] EWHC 3006 (Admin)
3. Appeal decision ref. APP/J1860/W/17/3183987
4. List of plans and documents (supplied by the Council)
5. Appellant's opening submissions
6. Extract from SWDP, Inspector's Report February 2016 (p.25-28)
7. SWDP Proposed Modifications (p.65-67)
8. Draft unilateral undertaking

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) Unless where required or allowed by other conditions attached to this permission, the development hereby approved shall be carried out in accordance with the information (including details on the proposed materials) provided on the application form and the following plans/drawings/documents:

Plans

Drawing nos. P001 Rev. B, P002, P003, P004, GA01, GA02, Type A/B PL01, Type A/ B EL01, Type A/ B PL01V2, Type A/ B EL01V2, Type C PL01, Type C EL01, Type D PL01, Type D EL01, Type D PL01 V2, Type D EL01 V2, Type E PL01, Type E EL01, Type E PL01 V2, Type E EL01 V2, Type F PL01, Type F EL01, Type G PL01, Type G EL01, Type J PL01, Type J EL01, Type K PL01, Type K EL01, Type L PL01, Type L EL01, Type M PL01, Type M EL01, Type N PL01, Type N EL01, Type P PL01, Type P EL01 and Landscape Proposals 001.

Documents

Planning Statement; Energy Statement; Affordable Housing Statement; Statement of Community Involvement; Utility Study; Design and Access Statement; Health Impact Assessment; Flood Risk Assessment and Drainage Management Strategy; Landscape and Visual Report; Tree Survey & Arboricultural Implications Assessment; Ecological Appraisal; Transport Statement; Travel Plan; Ground Investigation Report.

- 3) No development shall take place until a programme of archaeological work, including a Written Scheme of Investigation, has been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research questions, and:
 - a) The programme and methodology of site investigation and recording.
 - b) The programme for post investigation assessment.
 - c) Provision to be made for analysis of the site investigation and recording.
 - d) Provision to be made for publication and dissemination of the analysis and records of the site investigation.
 - e) Provision to be made for archive deposition of the analysis and records of the site investigation.
 - f) Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the approved Written Scheme of Investigation and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

- 4) Before the commencement of development hereby permitted an ecological mitigation and enhancement scheme shall be submitted to and approved in writing by the local planning authority. The scheme shall include mitigation in line with that recommended within the submitted ecological appraisal, together with specific biodiversity enhancement measures and an associated implementation timetable. The works shall thereafter be carried out in accordance with the approved details and timetable.
- 5) The development hereby approved shall not commence until a Construction Environmental Management Plan has been submitted to and approved in writing by the local planning authority. This shall include but not be limited to the following: -
- Measures to ensure that vehicles leaving the site do not deposit mud or other detritus on the public highway;
 - Details of site operative parking areas, material storage areas and the location of site operatives' facilities (offices, toilets etc);
 - The hours that delivery vehicles will be permitted to arrive and depart, and arrangements for unloading and manoeuvring;
 - Details of any temporary construction accesses and their reinstatement.

The measures set out in the approved Plan shall be carried out and complied with in full during the construction of the development hereby approved. Site operatives' parking, material storage and the positioning of operatives' facilities shall only take place on the site in locations approved by in writing by the local planning authority.

- 6) Notwithstanding the submitted Flood Risk and Drainage Management Strategy, no development shall commence until detailed design drawings and calculations for surface water drainage have been submitted to and approved in writing by the local planning authority. Thereafter, the development shall be carried out in accordance with the approved details.

No works or development shall take place until a 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.

Development shall not take place until an exceedance flow routing plan for flows above the 1 in 100+40% event has been submitted to and approved in writing by the local planning authority. The proposed scheme shall identify exceedance flow routes through the development based on proposed topography with flows being directed to highways and areas of Public Open Space. Flow routes through gardens and other areas in private ownership will not be permitted. The approved details shall be implemented in full prior to the first occupation of the development.

- 7) Notwithstanding the details submitted, the development shall not begin 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, and the development shall not be occupied until the scheme has been constructed in accordance with the approved drawings.
- 8) The construction work on the buildings hereby approved shall not be commenced until the precise floor slab level of the buildings, relative to the existing development on the boundary of the application site, has been submitted to and approved in writing by the local planning authority. Thereafter the new buildings shall be constructed at the approved floor slab level.
- 9) No building operations shall progress beyond slab level until details of the materials to be used in the construction of the external surfaces of the dwellings hereby permitted have been submitted to and approved in writing by the local planning authority. The details to be submitted shall include:
 - type, colour, texture, size, coursing, finish, jointing and pointing of brickwork;
 - type, colour, texture, size and design of roofing materials;
 - a precise specification of the proposed external render, including its colour and surface finish;
 - external window and door details, including colour/finishes; and
 - architectural details of eaves and verge treatments.The development shall be carried out using the materials as approved.
- 10) Drainage works associated with the development hereby permitted shall not commence until drainage plans for the disposal of foul water flows have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details before the development is first brought into use and shall be retained thereafter.
- 11) Within 6 months of commencement of the development hereby permitted, an Employment, Skills and Local Procurement Strategy shall be submitted to the local planning authority and agreed in writing. This strategy shall set out measures to provide local employment, skills and business opportunities during the construction phase of the development hereby approved. The development shall be carried out in accordance with these approved details.
- 12) The development shall be carried out in strict accordance with the details contained within the approved Energy Statement (Enplaner ID 1568). The sustainability measures and solar panels shall be implemented during the construction of the dwellings hereby approved and completed prior to the occupation of individual plots. They shall be retained thereafter.

- 13) Before the first occupation of the development hereby permitted a scheme of hard and soft landscaping shall be submitted to and approved in writing by the local planning authority. The landscaping scheme shall include: -
- (i) a plan(s) showing details of all existing trees and hedges on the application site. The plan should include, for each tree/hedge, the accurate position, canopy spread and species, together with an indication of any proposals for felling/pruning and any proposed changes in ground level, or other works to be carried out, within the canopy spread.
 - (ii) a plan(s) showing the layout of proposed tree, hedge and shrub planting and grass areas.
 - (iii) a schedule of proposed planting - indicating species, sizes at time of planting and numbers/densities of plants.
 - (iv) a written specification outlining cultivation and other operations associated with plant and grass establishment.
 - (v) a schedule of maintenance, including watering and the control of competitive weed growth, for a minimum period of five years from first planting.
- All planting and seeding/turfing shall be carried out in accordance with the approved details in the first planting and seeding/turfing seasons following the completion or first occupation of the development, whichever is the sooner. The planting shall be maintained in accordance with the approved schedule of maintenance. Any trees or plants which, within a period of five years from the completion of the planting, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
- 14) Before the first occupation of the development hereby permitted a schedule of landscape maintenance in perpetuity shall be submitted to and approved in writing by the local planning authority. The schedule shall include details of the arrangements for its implementation, long-term design objectives, management responsibilities and maintenance schedules for all landscape areas (excluding domestic gardens). The approved landscape maintenance schedule shall be fully implemented.
- 15) Before the first occupation of the development hereby permitted a plan indicating the positions, design, materials and type of boundary treatment to be erected shall be submitted to and approved in writing by the local planning authority. The boundary treatment shall be completed in accordance with a timetable agreed in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 16) Prior to the first occupation of the dwellings hereby approved, details of superfast broadband facilities or alternative solutions to serve the dwellings shall be submitted to and approved in writing by the local planning authority. The submitted details shall include an implementation programme. The facilities shall be provided in accordance with the approved details.

- 17) No dwelling shall be occupied until the parking spaces serving it, and the roads and pavements linking these spaces with the nearest publicly maintained highway, have been constructed to at least base course level. All roadways, turning areas and parking spaces shall be constructed and drained in accordance with details and a timetable which have been first agreed in writing with the local planning authority. Thereafter, these areas shall be retained and kept available for use at all times.
- 18) No dwelling shall be occupied until it has been provided with sheltered and secure cycle parking to comply with the County Council's adopted highway design guide, in accordance with details which shall first be submitted to and approved in writing by the local planning authority. Thereafter, the approved cycle parking shall be kept available for the parking of bicycles only.
- 19) Before the development hereby permitted is first occupied, details of any external lighting to be provided in association with the development, including any street lighting, shall be submitted to and approved in writing by the local planning authority. The details shall include times when the external lighting will not be switched on. Only external lighting in accordance with approved details shall be provided on the application site.
- 20) Prior to occupation of each dwelling on the development hereby permitted, water efficiency measures shall be installed to ensure that non-recycled water use per person does not exceed 110 litres per day. The sustainability measures shall be retained thereafter.
- 21) Appropriate cabling and an outside electrical socket shall be supplied to each dwelling, and in the case of apartments access to shared facilities shall be provided for each allocated parking space (excluding visitor spaces), to enable ease of installation of an electric vehicle charging point. The electrical connection shall be operational before the associated dwelling is first occupied. The socket shall comply with BS:1363 and be provided with a locking weatherproof cover.
- 22) The development hereby permitted shall be carried out in accordance with the approved Arboricultural Implications Assessment report and associated Tree Protection Plan. Unless indicated on the approved Tree Retention & Removal Plan as to be removed, all existing trees and hedges on the application site, or branches from trees on adjacent land that overhang the application site, shall be retained and shall not be felled or pruned or otherwise removed without the previous written consent of the local planning authority.
- 23) 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 Holidays.

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