



Appeal Decision

Site visit made on 27 October 2014

by JP Roberts BSc(Hons), LLB(Hons), MRTPI

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

Decision date: 02 December 2014

Appeal Ref: APP/J1860/A/14/2223735

Land south of Morningside with access from Oldwood Road, Tenbury Wells, Worcestershire, WR15

- 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 Marsten Developments Ltd and David Wilson Homes (Mercia) Ltd. against the decision of Malvern Hills District Council.
 - The application Ref 14/00035/OUT, dated 24 December 2013, was refused by notice dated 4 June 2014.
 - The development proposed is the erection of up to 33 dwellings, access roads, footpaths, garages and public open space.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of up to 33 dwellings, access roads, footpaths, garages and public open space on land south of Morningside with access from Oldwood Road, Tenbury Wells, Worcestershire WR15 in accordance with the terms of the application, Ref 14/00035/OUT, dated 24 December 2013, subject to the conditions attached as an Annex to this decision.

Procedural matters

2. The application is in outline with all matters reserved other than access, which is proposed to be taken from an existing access into a residential development under construction, called Tenbury View.
3. An obligation under s.106 of the Town and Country Planning Act 1990 has been submitted by the appellants which deals with the provision of affordable housing and other services and facilities. I shall refer to this in more detail below.

Main Issues

4. The application was refused for three reasons, two of which concerned archaeology and the absence of a legal agreement to address matters of affordable housing, and contributions towards transport, education and public open space. The Council has confirmed that the submission of additional archaeological information and the legal obligation have overcome these reasons for refusal. Thus the main issues are:
 - i) the implications of the proposal for the supply of housing;
 - ii) the effect of the proposal on the character and appearance of the surrounding area;

- iii) whether the proposal is sustainable development within the meaning of paragraph 7 of the National Planning Policy Framework (the Framework) and if so;
- iv) whether the benefits of the proposal are significantly and demonstrably outweighed by any harm to the character and appearance of the area and any other harm attributable to the development such that the presumption in paragraph 14 of the Framework to consider favourably applications for sustainable development is outweighed.

Reasons

Housing supply

- 5. It is common ground that the Council is unable to demonstrate a 5 year supply of housing land. At the time of determining the application, the Council accepted that it could demonstrate a supply of only 3.36 years. The Malvern Hills District Local Plan (LP) contains housing supply policies up to 2011, and is now out of date in this respect. The Council, in conjunction with neighbouring planning authorities, has submitted the South Worcestershire Development Plan to the Secretary of State for examination. Only limited weight can be attached to this Plan in view of the, as yet, untested nature of the housing proposals in the plan.
- 6. In such circumstances, the advice in paragraph 49 of the Framework is that relevant policies for the supply of housing should not be considered to be up to date. I shall refer to this further below.
- 7. In this case, the proposal would provide up to 33 new dwellings, 40% of which would be affordable, mainly for rent. In the light of the Framework objective to boost significantly the supply of housing, including affordable housing, I attach significant weight to this aspect of the proposal.

Character and appearance

- 8. The appeal site has no formal designation in respect of its landscape character or appearance, and whilst the Framework promotes the protection and enhancement of valued landscapes, it also recognises that protection should be commensurate with their status. The relevant LP Policy is DS3, which sets out 15 general development requirements which must be met before development is permitted. The most relevant of these requirements are criteria e) and g) which respectively require proposals to safeguard and enhance features of landscape, ecological, geological, heritage, archaeological and amenity value, and to ensure that development will not adversely affect the landscape character of the area.
- 9. The site forms part of an open grassed area which projects into the built-up outskirts of Tenbury Wells, comprising the north-western part of a valley which runs between Oldwood Road and Morningside and Berrington Road. The valley separates two distinct strands of residential development which meet at the junction of Morningside and Oldwood Road. The southern part of the valley is currently being developed with work having commenced on the erection of 43 dwellings. Thus the site is bounded on three sides by residential development, and the density and layout proposed would fit in with this existing pattern.

10. The appeal site is more steeply sloping and has more visual interest than the Oldwood Road side of the valley. The site is not prominent in public views; the steep bank adjacent Morningside restricts views of the site until it nears Bog Lane, where part of the site can be seen. More extensive views can be seen from Oldwood Road; however, the views from the northern part of the road are restricted by trees, and further south, the new residential development of Tenbury View will severely curtail the extent to which the appeal site can be seen from the road.
11. There are also views of the site obtainable from houses on Morningside, Berrington Road, Berrington Gardens and from houses to the east of Oldwood Road. Some of those views will be blocked by the new houses being erected at Tenbury Wells, although the occupiers of some of those new houses would also have views across the site. There is also a public footpath which bisects the site; on my visit I saw that the route of the path was well-defined in the grass sward, which suggests to me that the path is reasonably well used.
12. The proposal would echo the permitted scheme for Tenbury View in retaining an undeveloped area of public open space along the lower part of the valley. Whilst this undeveloped area would amount to about a third of the site's size, it would be the least visible from public viewpoints and much of it would not be seen from the public footpath which crosses the site. Nevertheless, this would provide a publically accessible area, which, together with the open space provided as part of the Tenbury View development, would provide some recreational and visual benefit for the public, not just for occupiers of the houses on the two sites.
13. On the other hand, the houses would occupy the higher, more prominent part of the site, and those on the northern boundary would break the skyline when seen from the south and east. I consider that built development would be the more apparent consequence of the development of the site.
14. Both of the main parties have submitted detailed landscape evidence, compiled by qualified landscape architects, and each arrives at very different conclusions. On the basis of what I have read and saw on my visit, I consider that the appeal site provides an attractive green interlude, projecting into the built up area, and it has visual interest because of the trees along the valley bottom and the steepness of its flank.
15. The Inspector who allowed an appeal in 2013 for 44 houses on land off Mistletoe Row¹, on a site to the south and south-west of this, further along the valley, described the "green tongue" of undeveloped land between Berrington Road/Morningside and Oldwood Road as being a pleasant feature which forms a separating function, which is particularly evident to the west of the main valley where there is a public footpath. I take this to be a reference to the vicinity of the current appeal site, and I agree with this assessment.
16. However, having seen the start that has been made on the recently approved housing development at Tenbury View, it is clear that the extensive views which previously existed from Oldwood Road will be severely curtailed. This reduces the importance that I attach to the landscape value of the site, but even taking this into account, I consider that the remaining views obtainable from Oldwood Road, the vicinity of the Bog Lane and Morningside junction, the

¹ Ref: APP/J1860/A/13/2194904

public footpath which crosses the site and the private views of existing houses and those to be built at Tenbury View are sufficient to conclude that the proposal would result in harm to the attractiveness of this tongue of land, albeit that the extent of that harm would be limited.

17. I therefore conclude on this issue that the proposal would cause limited harm to the character and appearance of the surrounding area, and would have a limited conflict with LP Policy DS3 on the protection of landscape character.

Whether the proposal amounts to sustainable development

18. Paragraph 14 of the Framework refers to the presumption in favour of sustainable development, which for decision-taking means granting permission where relevant policies of the development plan are out of date, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole, or where specific policies in the Framework indicate development should be restricted.
19. The Framework sets out 3 dimensions of sustainable development, economic, social and environmental. In this case, it is common ground between the main parties that the site meets locational sustainability criteria, being close to Tenbury Wells town centre, and transport links. This would help to fulfil social and environmental objectives, by providing good access to facilities and services for those without access to a car, and by reducing the need to travel by car, it reduces reliance on fossil fuels and lessens the impact on climate change.
20. Although housing development does not equate to economic development, the proposal would nevertheless provide modest economic benefits, in providing employment and trade in building materials, which would help to foster economic growth. It would provide clear social benefits in helping to address the housing needs of the area, and in particular, by providing 13 affordable houses, for which there is likely to be considerable need. On the other hand, I have found that it would result in limited harm to the landscape character of the area, although there would be no harm to the residential character of the built-up area bordering the site, and other criteria of Policy DS3 relating to environmental impact are met.
21. The limited harm to landscape character that I have found is only one aspect of many facets which have a bearing on whether the proposal constitutes sustainable development. Looked at it in the round, and having regard to the numerous environmental criteria of Policy DS3 that are met, I consider that as a matter of planning judgement the proposal constitutes sustainable development.

Balancing exercise

22. In view of the Government's objective to boost significantly the supply of housing, I attach considerable importance to meeting the housing needs of the area. The limited harm that I have found does not significantly and demonstrably outweigh the benefits. I therefore conclude that permission should be granted.

Other matters

23. Local residents expressed concerns about flood risk. A Flood Risk Assessment and Drainage Strategy was submitted with the application. A watercourse flows through the site and into the garden of a house adjacent the north-east corner of the site. By adopting sustainable drainage systems, it is proposed to attenuate water run-off from the site to less than greenfield run-off rates. I am satisfied that there is ample scope to incorporate water storage and attenuation measures within the vicinity of the watercourse. The Council's consultee, the South Worcestershire Land Drainage Partnership has indicated that it is satisfied with the level of detail submitted for an outline application, and full details would need to be considered when the exact layout is known. Accordingly, on the evidence available to me, I am satisfied that the risk of flooding could be adequately addressed.
24. I have had regard to residents' concerns about the relationship between the proposed and existing dwellings in respect of potential overlooking and loss of outlook, but these relate to matters of siting and design which can be considered when the full details are submitted for reserved matters approval.

Conditions and planning obligation

25. The Council has suggested conditions which I have assessed in the light of national guidance. I have adapted or amended the suggested wording where necessary in the interests of precision or enforceability.
26. Besides the standard conditions relating to outline applications it is necessary to require compliance with the approved plans, in the interests of good planning and for the avoidance of doubt. The re-instatement of the hedge along the access visibility splay is necessary in the interests of appearance. The site is steeply sloping and thus it is important for existing and proposed levels to be provided in order properly to assess the reserved matters submissions. Foul and surface water drainage details are needed to be submitted in order to secure satisfactory drainage of the site and to minimise flood risk. The submission of details of "green measures" is necessary to promote sustainable development.
27. Restrictions on hours of construction working are needed to protect the living conditions of neighbouring residential occupiers. The provision, surfacing and retention of parking facilities are required in the interests of highway safety. Further details of highway-related development, the provision of a visibility splay and the treatment of the public footpath are needed for the same reason, and in the latter case, to promote cycling. Details of parking for site operatives and visitors and measures for wheel cleaning are needed to protect highway safety. A condition to require the completion of roads within a reasonable period is needed to protect the living conditions of occupiers and in the interests of appearance.
28. Restrictions on the removal of the roadside hedge are needed to protect biodiversity. Conditions pertaining to archaeological investigations are needed to conserve any heritage interest of the site.
29. The planning obligation sets out the arrangements for securing affordable housing, and for making financial contributions towards education, public open space, highway works and transport initiatives. The principle of making such

contributions is justified by LP Policies DS18, CN2 and CN12, which respectively deal with planning obligations, affordable housing and the provision of public open space. I consider that these policies are broadly consistent with the Framework. Having regard to the evidence before me, including the Council's Open Space, Developer Contributions and Education Contributions Supplementary Planning Documents, I consider that the obligation satisfies the tests of Regulation 122 of the Community Infrastructure Regulations 2010, and is necessary, directly related to the development and reasonably related in scale and kind to the development proposed.

Conclusion

30. For the reasons given above, I conclude that the appeal should be allowed.

JP Roberts

INSPECTOR

Richborough Estates

Annex

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby approved shall be carried out in accordance with the following plans 13-070/001, 13-070/02, 14000/100, T6091/1 Rev1 and T6091/1 Rev1 (SECTIONS) unless otherwise required by conditions attached to this permission.
- 5) The details submitted pursuant to condition 2 relating to landscaping shall incorporate the reinstatement of a roadside hedge behind the visibility splay composed of locally native species and the supplementing of the established planting along the stream course with native trees.
- 6) Prior to the commencement of the development a detailed plan showing the levels of the existing site, the proposed slab levels of the dwellings approved and a datum point outside of the site, shall be submitted to and approved by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.
- 7) Development shall not commence until foul and surface water drainage details, incorporating sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, have been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with these approved details before any of the dwellings hereby approved are occupied.
- 8) 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 units hereby approved shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented and retained thereafter.
- 9) Demolition/ground works/construction work shall not take place outside the hours of Monday to Friday 07.30-18.00 hrs and Saturdays 08.00-13.00hrs. There shall be no such work on Sundays or Public Holidays.
- 10) The dwellings hereby permitted shall not be occupied until the accesses, shared driveways, service road access and parking facilities shown on the approved plan and in details to be approved under condition 2 have been properly consolidated, surfaced, drained and otherwise constructed in accordance with details to be submitted to and approved in writing by the Local Planning Authority and these areas shall thereafter be retained and kept available for those uses at all times.

- 11) Prior to the commencement of the development hereby permitted, engineering details of the widening, pedestrian refuge, white lining, street lighting, road signing, on-road cycling facilities and associated civil engineering works shall be submitted to 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.
- 12) The existing roadside hedgerow shall not be removed between March and August inclusive unless preceded by a thorough survey for nesting birds undertaken by an appropriately qualified ecologist. A report of the survey and recommendations prepared by that ecologist shall be submitted to and approved in writing by the Local Planning Authority before development commences.
- 13) The existing public footpath, Tenbury Footpath 558 shall, from its junction with Morningside to its first junction with an estate road, be upgraded to a shared footway/cycleway of width 3.5 metres. At its junctions with the highway and estate road visibility splays shall be provided from a point 0.6m above ground level at the centre of the footway/cycleway and 2.4 metres back from the near side edge of the adjoining carriageway, (measured perpendicularly), for a distance of 23 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. The footway/cycleway shall be provided during the construction of the adjacent estate road in accordance with details that shall have been submitted to and agreed in writing by the Local Planning Authority and shall thereafter be retained and maintained for that purpose at all times.
- 14) 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 near side edge of the adjoining carriageway, (measured perpendicularly), for a distance of 59 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.
- 15) 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.
- 16) The development shall not be 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.
- 17) The development shall not begin until parking for site operatives and visitors has been provided within the application site in accordance with details to be submitted to and approved in writing by the Local Planning Authority and such provision shall be retained and kept available during the construction of the development.

- 18) The development shall not begin until wheel cleaning apparatus has been provided in accordance with details to be submitted to and approved in writing by the Local Planning Authority, and which shall be operated and maintained during the construction of the development hereby approved.
- 19) All roadworks shall be completed within a period of two years or other period agreed in writing from the commencement of work on the site, or within six calendar months of the substantial completion of 75% of the dwellings hereby approved if this is sooner. 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.
- 20) No development shall take place until a programme of archaeological work, including a Written Scheme of Investigation, has been submitted to and approved by the local planning authority in writing. The scheme shall include an assessment of significance and research questions; and
 - (i) The programme and methodology of site investigation and recording;
 - (ii) The programme for post investigation assessment;
 - (iii) Provision to be made for analysis of the site investigation and recording;
 - (iv) Provision to be made for publication and dissemination of the analysis and records of the site investigation;
 - (v) Provision to be made for archive deposition of the analysis and records of the site investigation; and
 - (vi) Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation. No development shall take place other than in accordance with the approved Written Scheme of Investigation.
- 21) The development shall not be occupied until the archaeological site investigation and post investigation assessment have 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.