
Appeal Decision

Hearing held on 17 September 2014

Site visit made on 17 September 2014

by R C Kirby BA (Hons) DipTP MRTPI

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

Decision date: 16 December 2014

Appeal Ref: APP/H1840/A/14/2221170

**Harris owned land, Green Lane, Bevere, Worcester, Worcestershire
WR3 7QG**

- 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 Mr M Harris against Wychavon District Council.
 - The application Ref W/13/01131/OU, is dated 24 May 2013.
 - The development proposed is an outline application for the residential development of 17 no dwellings (including 7 no affordable) and new estate road access from Green Lane, footpaths, open space and associated works.
-

Decision

1. The appeal is allowed and outline planning permission is granted for the residential development of 17 no dwellings (including 7 no affordable) and new estate road access from Green Lane, footpaths, open space and associated works at Harris owned land, Green Lane, Bevere, Worcester, Worcestershire WR3 7QG, in accordance with the terms of application Ref W/13/01131/OU, dated 24 May 2013 and subject to the 11 conditions in the attached Schedule.

Procedural Matters

2. The application was submitted in outline and the application form makes it clear that only access is to be determined at this stage. At the Hearing, the appellant confirmed that the layout plans contained within the Design and Access Statement were for illustrative purposes only. It is on this basis that I have determined the appeal.
3. The ownership certificates submitted with both the application and appeal were not correctly served. The owners of the land are the appellant's parents. At the Hearing I was given a copy of a revised ownership certificate which was served on the 16 September 2014. I was also given a letter from the land owners of the same date, confirming that they were aware of both the planning application and appeal and had no comments to make on the proposal. The requisite period from the serving of this notice has now elapsed. On this basis, I am satisfied that no person would be prejudiced if the appeal went ahead.
4. A completed Unilateral Undertaking (UU) dated 17 September 2014 was submitted at the Hearing. A Supplemental Undertaking (SU) dated 15 October 2014 was submitted after the Hearing. The Council has had the opportunity to comment on both Undertakings and its comments have been taken account in

my decision. I have considered the obligations contained within the UU and SU later in my decision.

Background

5. At its meeting on 12 September 2013, the Council resolved to grant planning permission for the proposed development, subject to a Section 106 (S106) Agreement being entered into in respect of affordable housing, community and infrastructure matters.
6. The appellant did not enter into the requested S106 Agreement as he disputed the requirement to provide a link road for vehicular traffic across the site as well as the contribution sought towards improvements to bus shelters in the area. Furthermore, whilst not disputing the financial contribution sought towards off-site built sports facilities, the appellant considers that this money should be directed towards facilities in Worcester City rather than facilities in Droitwich.

Main Issues

7. The principle of residential development upon this site is not in dispute. Although the site is located within the countryside within the adopted Wychavon District Local Plan (WDLP), it forms part of a wider site allocated for 250 dwellings within the emerging South Worcestershire Development Plan Proposed Submission Document (SWDP). Outline planning permission has already been granted on the adjoining land for 230 dwellings.
8. The proposed new houses would contribute towards the housing need of the Wider Worcester Area. Given the site's location on the edge of Worcester, close to public transport links, shops and services, I have no reason to reach a different conclusion to the Council that the site is suitable for residential development, would meet an identified housing need and is within a sustainable location.
9. Accordingly the main issues in this case are:
 - whether the proposal makes adequate provision for suitable vehicular and pedestrian links to the adjoining sites, which have planning permission for residential development; and
 - the appropriateness or otherwise of contributions sought in relation to public transport enhancements and off-site built sports facilities.

Reasons

Vehicular and pedestrian link

10. In order to provide a comprehensive and cohesive development across the larger allocated site, the Council is seeking for the appellant to provide a pedestrian and vehicular link road across the appeal site. This would subsequently connect to the pedestrian and vehicular link road that is required to be provided on each of the adjoining sites.
11. Paragraph 61 of the National Planning Policy Framework (the Framework) advises that planning policies and decisions should address the connections between people and places and that new development should be integrated into the natural, built and historic environment. The appellant is willing to

provide a pedestrian and cycle link across the site, but not a road suitable for vehicles.

12. Although a vehicular link across the site would increase vehicle connectivity across the wider allocated site, I do not consider that it is necessary to make the development acceptable in planning terms. The site can be independently accessed from Green Lane and the Highway Authority has raised no objection to this aspect of the proposal. Furthermore, the adjoining sites can be independently accessed and do not rely on the vehicular access across the appeal site. Furthermore, I consider that the provision of a cycle and pedestrian link across the site would assist in achieving the Council's objective of providing connectivity between the respective housing sites. Such a link would encourage residents of the new houses to walk to the bus stop, open space and shop that would be provided on the adjoining sites, rather than drive. This would be in accordance with the Framework's core planning principle to make the fullest possible use of public transport, walking and cycling.
13. Given these findings, I conclude that the provision of a combined vehicular and pedestrian link across the site does not meet the statutory tests set out in Regulation 122 of the Community Infrastructure Regulations 2010 (CIL Regulations). However, a pedestrian and cycle link is necessary to ensure connectivity between the appeal site and adjoining sites in accordance with the Framework. This could be secured by planning condition.

Public transport enhancements

14. The Council is requesting a financial contribution of £20,000 towards the provision of 2 bus stops within the vicinity of the appeal site. The money would be used to provide improved access and facilities as well as real time bus information.
15. Paragraph 32 of the Framework supports the Council's approach to improving public transport provision. However, the Framework also advises that development should only be prevented or refused on transport grounds where the residual cumulative impacts are severe. I was not provided with substantive evidence either in writing, or at the Hearing to demonstrate that this would be the case. Furthermore, the Council has not identified the location of the bus stops it intends to improve with the requested contribution. There is therefore no certainty that the facilities would be directly related to the development. The statutory tests would not be complied with.
16. However, the appellant has made an obligation within the UU to provide a financial contribution towards a bus shelter in Bever Close. The number 32 bus route would be extended to serve the larger allocated site and it would run one way along Bever Close. There are no bus stops in this road at present, and being almost opposite the appeal site, a bus stop in this road would provide easy access to public transport facilities for residents of the new houses. Such a facility is both reasonable and necessary to serve the development and therefore complies with the statutory tests.

Off-site built sports facilities

17. The Council's Developer Contributions Towards Service Infrastructure has been adopted as Supplementary Planning Guidance and provides for a financial

contribution to be made to enable the improvement of leisure facilities. The Council has adopted Sport England's Sports Facilities Calculator to calculate the contribution sought. The Council wish to see the requested financial contribution being spent on improving built sports facilities at Droitwich Leisure Centre. This Centre has been identified for improvements in a report by the Council's consultants 'Nortoft'.

18. It is inevitable that residents of the new dwellings would place an extra demand on built sports facilities in the area. Whilst the appellant considers that the amount of money requested by the Council is acceptable, he is concerned that residents of the new development would be likely to use built sports facilities in Worcester City rather than those in Droitwich. The submitted UU therefore makes provision for sports facilities to be improved at several centres in Worcester.
19. Whilst it is likely that some residents of the new houses may use sports facilities in Worcester, I have no substantive evidence before me to demonstrate that there is a need for improvement to built sport facilities at the centres identified within the UU, or whether there are specific implementable schemes to which the contribution would be linked. Indeed, the Council's evidence demonstrated that a large number of residents of Worcester City use sports facilities in Droitwich. These figures were not disputed at the Hearing. Although the Council is undertaking further work into built sports facilities, I am satisfied that at this time there is a specific scheme in Droitwich where the requested financial contribution could be spent.
20. In light of the above I am not satisfied that the obligation set out within the UU in respect of built sports facilities would comply with the statutory tests, contained within Regulation 122 of the CIL Regulations. Furthermore, I question the mechanism for payment and delivery as contained within the UU, as it would span 2 administrative areas.
21. Given my findings above, I conclude that a contribution towards off site built sports facilities is necessary in planning terms. The obligation with the UU fails to satisfactorily provide this. Both the appellant and the Council consider that a financial contribution towards built sports facilities could not be secured by planning condition. The submitted SU would however provide for a contribution to be made towards improving built sports facilities at Droitwich Leisure Centre. The contribution sought to improve such facilities is fairly and reasonably related in scale and kind to the development. The statutory tests are therefore complied with.

Other Matters

22. The obligations contained within the UU in respect of affordable housing; the cycling, education, recycling and off site formal sports contributions; the contributions towards the Worcester Transport Strategy and the provision of public space or a contribution towards off-site provision are not in dispute. However, I am obliged to consider whether the contributions sought are in accordance with paragraph 204 of the Framework and the statutory tests set out in Regulation 122 of the CIL Regulations.
23. Saved Policy COM2 of the WDLP requires affordable housing to be provided where certain thresholds are met. The proposed development is above the defined thresholds in both the number of dwellings proposed and the size of

the site. Further guidance is given within the Council's Supplementary Planning Guidance on Affordable Housing. The UU makes provision for 7 units to be affordable and I am satisfied that this provision is reasonable and necessary to make the development acceptable in planning terms.

24. Within its statement, the Council refers to policies within the WDLP that support contributions for relevant infrastructure, including Policies GD3, SR5 and COM12. Policy WCS 17 of the Waste Core Strategy for Worcestershire is also referred to. These policies relate to impacts on the community and the environment, as well as meeting the objectives of sustainable development.
25. I am satisfied that the financial contributions towards cycling, education, recycling, off site formal sports contributions and the Worcester Transport Strategy are linked to specifically deliverable schemes. They are necessary in light of the additional pressure brought through the development. The provision of public open space either upon the site, or the payment of a financial contribution if it is to be provided off site, is necessary and reasonable given the size of the development. It is also an important element in providing a high quality development and environment that serves the needs of future residents of the site. Furthermore, they are all contributions that would comply with Development Plan policies, relevant Supplementary Planning Documents or Supplementary Planning Guidance. The contributions sought therefore meet the statutory tests.

Conditions

26. The Council has suggested a number of conditions in writing which it considers would be appropriate were I minded to allow the appeal. The conditions were agreed between the 2 main parties within the Statement of Common Ground. I have considered the suggested conditions below, in accordance with the advice on conditions within the Planning Practice Guidance.
27. A condition is necessary to ensure that the development is carried out in accordance with the approved plans. In order to protect the living conditions of nearby residents a condition requiring the submission of a construction management plan is necessary. In the interests of archaeology, a condition is necessary requiring a scheme of investigation to occur. To ensure that the development is sustainable, a condition relating to the submission of a drainage scheme for surface water and foul water is necessary. In the interests of biodiversity, a condition is necessary requiring a mitigation and enhancement scheme to be implemented.
28. Conditions relating to the provision of the access and visibility splays and details of the widening of Green Lane are necessary in the interests of highway safety. A condition requiring the provision of a pedestrian and cycle link across the site is also necessary in sustainability terms and to ensure that the site integrates well with the wider allocated housing site.
29. Given the nature of the outline application and the matter for which approval is being sought, conditions relating to the phasing of development, the importing of soil, requirements of the reserved matters application; renewable energy and water conservation; the storage of refuse and details of a lighting scheme are not necessary at this stage. A separate condition is not necessary requiring details to be submitted in respect of bird and bat boxes as this is suitably

covered in the ecological mitigation and enhancement condition. The site is located in excess of the recommended distances from the gas pipelines in the area and therefore a condition requiring development to be located a certain distance from this infrastructure is not necessary.

Conclusion

30. For the above reasons, and having regard to all other matters raised, the appeal is allowed.

R C Kirby

INSPECTOR

Richborough Estates

APPEARANCES

FOR THE APPELLANT

Mr Mark Harris	Appellant
Mr Richard Alexander	The Ainley Alexander Partnership Ltd
Mrs Morag Thomson	Marrons Shakespeares
Mr Roger Ainley	The Ainley Alexander Partnership Ltd
Mr Chris May	Marrons Shakespeares

FOR THE COUNCIL

Mr Neil Pearce	Development Manager (Planning)
Mrs Heather Peachey	Project and Development Officer
Ms Karen Hanchett	Worcestershire County Council Highways
Mr Dave Pilcher	Worcestershire County Council Highways
Mr Jeremy Teal	Sports Development Manager

INTERESTED PARTIES

Mr Keith Layton	Local Resident
Mr R Hathway	Independent Observer

DOCUMENTS SUBMITTED AT THE HEARING

1. Copy of Unilateral Undertaking dated 17 September 2014
2. Copy of Conveyance dated 21 October 1982
3. Copy of Ownership Certificates and Letter dated 16 September 2014 from Mr C A and Mrs H F Harris.
4. Statement of Common Ground dated 17 September 2014
5. Copy of email dated 16 September 2014 relating to costing of proposed link road
6. Copy of Design and Access Statement
7. Copy of Flood Risk Assessment by Cole Easdon Consultants Limited
8. Copy of Geophysical Survey Report undertaken by Stratascan
9. Copy of Water Management Statement (April 2013)

10. Copy of Tree Report undertaken by Aspen Landscape Design (Planning) Services
11. Copy of Transportation Assessment undertaken by Woods Ferrer Limited
12. Copy of Phase 1 Habitat Survey and Protected Species Survey Assessment undertaken by Worcestershire Wildlife Consultancy
13. Copy of Requirements of Western Power Distribution Relating to Development or Work in Proximity to 132kV Overhead Lines
14. Copy of Notification Letter dated 1 September 2014 advising of Hearing

DOCUMENTS SUBMITTED AFTER THE HEARING

15. Supplemental Undertaking dated 15 October 2014

Richborough Estates

SCHEDULE

CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan, Drawing Number 001 and Proposed Access, Drawing Number 004.
- 2) 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.
- 3) 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.
- 4) 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) no burning of materials during construction
 - v) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate
 - vi) wheel washing facilities
 - vii) measures to control the emission of dust and dirt during construction
 - viii) a scheme for recycling/disposing of waste resulting from demolition and construction works
 - ix) hours of work for clearance, construction and deliveries to and from the site
 - x) ecological protection zones and details of protective measures (physical and sensitive working practices)
 - xi) contact details of responsible persons or contractors
- 5) No development shall take place until a programme of archaeological work has been implemented in accordance with a written scheme of investigation which has been submitted to and approved in writing by the local planning authority.
- 6) No development shall take place until details of the implementation, maintenance and management of a sustainable drainage scheme have been submitted to and approved in writing by the local planning authority. The scheme shall be implemented and thereafter managed and maintained in accordance with the approved details.
- 7) No development shall take place until a scheme for the mitigation and enhancement of ecology upon the site has been implemented in

accordance with a written programme which has been submitted to and approved in writing by the local planning authority.

- 8) No development shall take place until the engineering details and specification of the approved access have been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in accordance with the approved details.
- 9) No development shall take place until the access and visibility splays have been provided in accordance with Drawing Number 004. The visibility splays shall thereafter be retained.
- 10) No development shall take place until details of the widening of Green Lane including the provision of a footway, and a programme for its implementation have been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in accordance with the approved details.
- 11) No development shall take place until details of a cycle and pedestrian link between the east and west boundaries of the site and a programme for its implementation have been submitted to and approved in writing by the local planning authority. The cycle and pedestrian link shall be provided in accordance with the approved details.

Richborough Estates