



Appeal Decision

Site visit made on 20 October 2015

by Y Wright BSc (Hons) DipTP MSc DMS MRTPI

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

Decision date: 24/11/2015

Appeal Ref: APP/J1860/W/15/3131939

Lawn Farm, Drake Street, Welland, Malvern WR13 6LP

- 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 Kler Developments Ltd against the decision of Malvern Hills District Council.
 - The application Ref 14/01269/OUT, dated 29 August 2014, was refused by notice dated 24 February 2015.
 - The development proposed is described as 'outline application in relation to a sustainable residential development of up to 50 dwellings with access, with all other matters reserved'.
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Decision

1. The appeal is allowed and planning permission is granted for outline application in relation to a sustainable residential development of up to 50 dwellings with access, with all other matters reserved at Lawn Farm, Drake Street, Welland, Malvern WR13 6LP in accordance with the terms of the application, Ref 14/01269/OUT, dated 29 August 2014, and the plans submitted with it, subject to the conditions set out in the attached schedule.

Procedural matters

2. The application was submitted in outline with all matters except for access reserved for future determination. I have considered the appeal on this basis, although I note the illustrative housing layout and other plans provided.
3. The proposed access road would be located along the same route as that detailed within an adjacent residential development site which was allowed on appeal in January 2014 following an Inquiry (ref: APP/J1860/A/13/2197037).
4. The Council, in its appeal statement confirms that it no longer objects to the proposal on the grounds of the first reason for refusal, as an outline ecological mitigation strategy and a Great Crested Newt and Bat report have now been provided.
5. Since the site visit, a completed and signed certified copy of a S106 planning obligations agreement between Malvern Hills District Council, Worcester County Council, Roger James Cousins and Kler Group Limited and dated 28 October 2015 has been submitted. In relation to the remaining reasons for refusal it is necessary for me to assess the required contributions within my decision.

Main Issues

6. The main issues raised by the proposal are:
- The effects on the demand for and provision of highway infrastructure, education and open space;
 - The effect on the supply of affordable housing; and
 - Whether administration and monitoring fees should be provided.

Reasons

Demand for and provision of highway infrastructure, education and open space

7. Policy DS18 of the Malvern Hills District Local Plan (2006) (LP) permits development only where existing services and infrastructure are available or where it will be secured through the provision of necessary planning obligations to ensure sustainable development is achieved. The accompanying text to the policy includes reference to the provision of transport infrastructure and education, whilst LP Policy CN12 specifically requires the provision of public open space.
8. In response to the requests of Malvern Hills District Council and Worcester County Council, the S106 Agreement contains obligations to secure the provision of highway infrastructure, education and open space contributions, none of which are contested by the appellant.
9. As regards highway infrastructure contributions, a sum of £20,715.86 would go towards local passenger transport services and walk and cycle link schemes within the village of Welland to improve connectivity and serve the development.
10. In relation to education contributions, the following sums are requested from open market houses: £2,046 per 2 or 3 bedroom house, £3,069 per 4 or more bedroom house and £818 per 2 bedroom flat or apartment. This is proposed to be used to expand the level of accommodation at the local Welland Primary School to a one form entry primary school serving the development.
11. The off site open space contribution of £4,600 per dwelling would go towards the provision, extension and maintenance of outdoor play space and equipped play facilities in the vicinity of the site which would serve the development. The Council in its statement of case refers to the need for the provision of additional sports pitches and local indoor and outdoor facilities within the village of Welland.
12. From the information supplied I therefore conclude that the obligations required by the Councils are necessary to make the development acceptable in planning terms, are directly related to the development and are fairly and reasonably related in scale and kind to the development proposed, which satisfies the tests in paragraph 204 of the National Planning Policy Framework (the Framework) and Regulation 122 of the Community Infrastructure Levy 2010 (CIL regulations). Moreover, I am satisfied on the basis of the evidence submitted to the Council by relevant consultees in respect of these contributions, that they are beneath the five number pooling threshold. They are therefore compliant with the revised Regulation 123 of the CIL regulations

as modified in April this year and I am able to take them into account in reaching my decision.

13. The S106 Agreement includes these planning obligations and therefore the proposal would comply with LP Policies DS18 and CN12 and the Framework. The proposal would also be in accordance with Policies SWDP7 and SWDP39 of the emerging South Worcestershire Development Plan (DP) which seek the provision of necessary infrastructure and open space respectively.

Supply of affordable housing

14. The site size meets the threshold for LP Policy CN2 which states that up to 50% of dwellings on the site should be affordable housing. The Council refers to the emerging DP policy SWDP15 which states that 40% affordable housing would be required and confirms that the emerging policy is considered to support the most recent evidence on affordable housing. As such the provision of 40% affordable housing would still meet the adopted policy. In addition paragraph 50 of the Framework requires the delivery of a wide choice of high quality homes and the creation of sustainable, inclusive and mixed communities.
15. I therefore conclude that the obligation to provide 40% affordable housing is necessary to make the development acceptable in planning terms, is directly related to the proposal and is fairly and reasonably related in scale and kind to the development proposed, which satisfies the tests in the Framework and Regulation 122 of the Community Infrastructure Levy 2010.
16. As the S106 agreement includes the provision of 40% affordable housing on the site I conclude that the proposal would be in accordance with LP Policy CN2; emerging DP Policy SWDP15 and the Framework in this regard.

Whether administration and monitoring fees should be provided

17. Both Worcester County Council and Malvern Hills District Council have requested administration and monitoring fees within the Section 106 Agreement of £250 and £1,500 respectively.
18. Whilst these fees are set out within the Agreement, the obligation is constructed in such a way that my decision will determine whether they would be payable. Although I accept that both the District and County Council would incur costs in relation to the Agreement, this forms part of normal Council functions. Moreover, the Council have not provided any detailed evidence to persuade me this was justified in the particular circumstances of this case. I therefore do not consider that the payment of such fees is justified or necessary to make the development acceptable in planning terms. For this reason I conclude that the payment of administration and monitoring fees would not be in accordance with the requirements of regulation 122 of the CIL Regulations.

Other matters

19. Concerns have been raised about the effect of the proposal on the setting of the Malvern Hills Area of Outstanding Natural Beauty (AONB), particularly in relation to the cumulative effect of adjacent developments that have permission for housing development. However I share the Council's view that due to the proximity of the proposal to the village, it would be viewed within the landscape as an extension to this, rather than as a separate development.

I therefore consider that its impact would not result in significant material harm to the AONB.

20. Whilst the effect of the proposal on the adjacent Mutlows Orchard Site of Special Scientific Interest (SSSI) has also raised concerns, I note that Natural England and the Council do not object to the proposal. I consider that a suitably worded condition as suggested by Natural England and the Council requiring the provision of a buffer between the development and the SSSI could be included.
21. In relation to local concerns about this proposal setting a precedent, whilst I recognise that other planning applications for residential development have been approved on adjacent sites and construction has recently commenced¹, it is a fundamental principle of the planning system that each planning application and appeal must be determined on its own individual merits. I therefore consider this proposal on that basis.
22. In relation to concerns including footpaths, wildlife, highway safety and the capacity of local infrastructure such as schools, the Council does not object on these grounds and I have no substantive evidence to indicate that the site would cause adverse harm on these matters.

Conditions

23. I have considered the conditions suggested by the Council in the light of the advice given in the Planning Practice Guidance (PPG). As such I do not impose all of them and amend the wording of others, in the interests of precision and enforceability. I am satisfied that the conditions set out in my decision meet the tests within the PPG.
24. Conditions on setting reasonable time limits and the provision of details on reserved matters are necessary as the application made is for outline permission. I attach a condition specifying the approved plans for the avoidance of doubt and in the interests of proper planning.
25. As appearance, scale, landscaping and layout are issues that are reserved for consideration at a later stage I am not persuaded that it is necessary to impose conditions referring to the Design and Access Statement, location of affordable housing, the size of market homes, car parking, cycle parking or open space at this stage. I therefore do not attach such conditions.
26. However, to ensure the proper implementation of the development and protect the living conditions of future occupiers, I do impose conditions on site levels, foul and surface water drainage and contamination. I also attach a condition on site access to ensure highway safety, one to prevent development that would obstruct the Public Right of Way that runs through the site and another to ensure that the bus stop adjacent to the site access is safely relocated.
27. To promote sustainable travel I attach conditions requiring the submission of a travel plan and external electrical sockets to enable the easy installation of an electric vehicle. To ensure sustainability measures such as energy efficiency and waste management are incorporated into the development I attach a suitable condition. In addition to provide the future occupiers of the development with a greater opportunity for home working and a reduction

¹ Appeal ref: APP/J1860/A/13/2197037 and Council ref: 13/01526/OUT

in car based commuting, I find that a condition on the provision of super-fast broadband is necessary. However the Council has not supported the apparent necessity for the provision of an outside electrical socket to ease the installation of an electric vehicle charging point at each dwelling, with any detailed sustainability evidence. As such I do not impose this condition.

28. I attach a condition requiring archaeological site investigations to ensure that any heritage assets are appropriately recorded and published.
29. Whilst landscaping is a reserved matter, to ensure the protection of existing trees and hedges within the site I attach conditions requiring a landscape management plan and arboricultural method statement. In addition, to safeguard the Mutlows Orchard SSSI a condition requiring a mitigation strategy is necessary. As regards other wildlife I impose conditions protecting and enhancing biodiversity including one on external lighting.
30. Conditions requiring a Code of Construction Practice and restricting the hours for the construction of the development are necessary to safeguard the living conditions of existing neighbours during the construction period.

Conclusion

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

Y. Wright

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) 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.
- 2) 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.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans: site boundary plan X/CPWelland2.1/01 and X/CPWelland2.1/05.
- 4) Details of the appearance, landscaping, layout, and scale, (including boundary treatments, location of the affordable housing and provision of open space and green infrastructure) (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.
- 5) The submission of reserved matters shall include details of the levels of the exiting site, the proposed slab levels of the dwellings and a datum point outside of the site. These are to be approved in writing by the local

- planning authority and the development shall be carried out in accordance with the approved details.
- 6) No development shall take place until details of the proposed foul and surface water drainage for the site, have been approved in writing by the local planning authority. This shall include the submission of the results of an assessment into the potential for using sustainable drainage systems. No dwelling shall be occupied until the works have been carried out in accordance with the approved scheme.
 - 7) No development shall take place until a contaminated land investigation has been carried out in accordance with a methodology which has been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority and implemented in accordance with the approved scheme. Following the completion of any remediation measures and prior to the occupation of the first dwelling a validation report must be prepared, which is subject to the approval in writing of the local planning authority. 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 and implemented subject to the approval in writing of the local planning authority.
 - 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 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.
 - 9) No development shall take place until the roadworks necessary to provide access from the nearest publicly maintained highway have been provided in accordance with the Proposed Site Access drawing X/CPW/land2.1/05, and to a specification to be agreed in writing with the local planning authority. This specification shall include the provision of visibility splays 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 120 metres in each direction along the nearside edge of the adjoining carriageway. Nothing thereafter shall be planted, erected and/or allowed to grow which would obstruct the visibility splays so provided.
 - 10) No development shall take place which obstructs the existing Public Right of Way crossing the application site until an Order has been made for it to be diverted or stopped-up. Development shall be carried out in accordance with the Order.
 - 11) No development shall take place until details of the means by which the bus stop adjacent to the site access on Drake Street, shall be relocated have been submitted to and approved in writing by the local planning authority. The relocation shall be carried out in accordance with the

approved details and completed before the first of the dwellings hereby approved is occupied.

- 12) The development hereby permitted shall not be brought into use until the applicant has submitted to and had approved in writing by the local planning authority, a travel plan that promotes sustainable forms of access to the site.
- 13) No development shall take place until an Archaeological Watching Brief, 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:
 - i. A programme and methodology for site investigation and recording and for post investigation assessment;
 - ii. Provision for analysis, publication and archive deposition of the results; and
 - iii. Nomination of a competent person or organisation to undertake the works set out within the Written Scheme of Investigation.

Development shall take place in accordance with the approved Written Scheme of Investigation and no dwelling shall be occupied until the approved programme of works has been completed.
- 14) No development shall take place until details of the means by which the dwellings hereby approved may be connected to the utilities to be provided on site to facilitate super-fast broadband connectivity have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 15) 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 approved in writing by the local planning authority and shall be implemented as approved.
- 16) The existing trees and hedges shown to be retained within the RGS Arboricultural survey report amended 27.11.14 and in particular the tree constraints/protection plan within this report, shall not be damaged or destroyed, uprooted, felled, lopped or topped during the construction period of the development. Any trees or hedgerows removed without such consent or dying or being seriously damaged or diseased during that period shall be replaced with healthy trees of such size and species as agreed in writing by the local planning authority.
- 17) No development shall take place until an arboricultural method statement has been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved.
- 18) The submission of reserved matters applications shall incorporate the mitigation measures and recommendations identified within the Aspect Ecology Great Crested Newt and Bat report dated July 2015, and Section 5 of the Preliminary Ecological Appraisal dated August 2014, or updated surveys which have subsequently been submitted to and approved in

- writing by the local planning authority. The development shall be carried out as approved.
- 19) The submission of reserved matters shall be accompanied by a mitigation strategy for the Mutlows Orchards SSSI to be submitted to and approved in writing by the local planning authority. The mitigation strategy should include but not be limited to providing a vegetative buffer of no less than 8m wide between residential gardens and the SSSI to avoid cross pollination of wild daffodil species and reduce other direct impacts. The strategy shall be implemented as approved.
- 20) No development shall take place until 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 so approved, shall be carried out in accordance with the approved programme of implementation.
- 21) No development shall take place until an external lighting scheme has been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved scheme.
- 22) 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 include the following details:
- i. the parking of vehicles of site operatives and visitors,
 - ii. the loading, unloading and storage of plant and materials,
 - iii. the erection and maintenance of security hoardings,
 - iv. wheel washing facilities and other measures to control the emission of dust and dirt during construction, and
 - v. a scheme for recycling/disposing of waste resulting from demolition and construction works.
- 23) Demolition/ground works/construction work shall not take place outside the following hours:
- a. Monday to Friday - 07.30-18.00 hrs
 - b. Saturdays - 07.30-13.00 hrs.
 - c. There shall be no such work on Sundays or Public Holidays.