



Appeal Decision

Hearing held on 9 July 2013

Site visit made on 9 July 2013

by Lesley Coffey BA (Hons) BTP MRTPI

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

Decision date: 18 October 2013

Appeal Ref: APP/J1860/A/13/2192810

Land at Walshes Farm. Clows Top Road, Abberley, WR6 6AZ

- 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 Crowle Properties Two Ltd against the decision of Malvern Hills District Council.
 - The application Ref 12/01008/OUT, dated 6 July 2012, was refused by notice dated 8 February 2013.
 - The development proposed is 15 houses, 7 of which to be affordable.
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Decision

1. The appeal is dismissed.

Application for costs

2. At the Hearing an application for costs was made by Crowle Properties Two Ltd against Malvern Hills District Council. This application is the subject of a separate Decision.

Procedural Matters

3. The proposal is an outline application with all matters except access reserved for future consideration. Plans showing the proposed layout of the site were submitted with the application for illustrative purposes and provide a useful guide when considering the proposal before me.
4. At the Hearing the appellant submitted an incomplete unilateral undertaking the purpose of which was to provide affordable dwellings on the appeal site, and make a financial contribution towards education, open-space and transport. The appellant explained that two signatures were still awaited and that there were some minor drafting issues to resolve. The appellants were permitted an additional week to submit a complete and correct unilateral undertaking.
5. Following the close of the Hearing, the appellant submitted a document labelled 'Final Unilateral Undertaking Unsigned 170713'. The submitted document was dated 17 July 2013. The undertaking was unsigned, and signatures from two of the four parties to it, as well as a plan labelled 'Plan 1', were submitted as separate documents. A further signature from the Legal Services Commission was subsequently provided. With the exception of the signatures from the Legal Services Commission, the other signatures were undated.

6. The appellant also confirmed that a revised version of the unilateral undertaking, forwarded to the Inspectorate by the Council on 19 July was acceptable to them. Although this document is undated and unsigned it does not appear to make any significant changes to the agreement submitted by the appellant.
7. Following the discharge of the mortgage on 6 September 2013, the appellant advised the Planning Inspectorate that the fourth party to the undertaking, Northern Rock(Asset Management) PLC no longer had an interest in the land.
8. Guidance within '*Procedural Guidance – Planning Appeals and Called in Appeals Planning Applications England*' (August 2013) is clear that planning obligations are public law documents which are entered on the planning register and the local land charges register and are often copied to residents and other interested parties. The planning obligation should be one single document executed by all the relevant parties. The version of the unilateral undertaking submitted by the appellant is labelled '*Final Unilateral Undertaking Unsigned 170713*', and the submitted signatures do not form part of the same document. Therefore whilst I do not doubt the appellant's willingness to enter into a unilateral undertaking in relation to the matters referred to above, due to the form of the submitted undertaking, with separate signatures and plan it is not acceptable. I have therefore not taken it into account in reaching my decision.

Main Issues

9. I consider the main issues to be:
 - Whether the principle of the proposed development within a category 3 settlement is acceptable having regard to housing land supply issues within Malvern Hills District;
 - Whether in the light of development plan policies, national guidance and other material considerations the proposal would be a sustainable form of development;
 - Whether the financial contributions sought by the Council are reasonable and necessary, and would comply with the tests within Regulation 122; and
 - Whether the proposal would make satisfactory provision for affordable housing.

Reasons

10. Following the revocation of the WMRSS and the Worcester County Structure Plan, the development plan for the area comprises the Malvern Hills District Local Plan (adopted 2006). The emerging South Worcestershire Development Plan (SWDP) is being produced jointly by Wychavon District Council, Malvern Hills District Council and Worcester City Council to guide development in the South Worcestershire area. The Proposed Submission version was subject to public consultation and has been submitted to the Secretary of State for examination. The Council anticipate that the SWDP will be adopted in late 2013. The National Planning Policy Framework (the Framework) provides that weight may be attached to the relevant policies within the emerging plans according to its stage of preparation; the extent to which there are unresolved objections to relevant policies; and the degree of consistency of the relevant policies in the emerging plan to the policies in the Framework.

Housing Land Supply

11. The appeal site is an agricultural field situated adjacent to, but outside of, the settlement boundary of Abberley Common. Local Plan policy DS1 directs development to sustainable locations appropriate to the scale and form of development proposed. In rural areas it aims to strictly control development in the open countryside and restricts development to that necessary to meet local needs and aid rural regeneration. Policy DS14 has a similar objective and restricts housing development outside of the settlement boundaries other than for specified purposes. Policy SWDP2 of the emerging SWDP has a similar intent to policy DS14.
12. The Framework sets out the national planning policy context in relation to housing. Paragraph 55 states that isolated new houses within the countryside should be avoided unless there are special circumstances. However, the Framework also seeks to significantly boost the supply of housing and deliver a wide choice of high quality homes. Paragraph 49 advises that policies relevant to the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five year supply of deliverable sites. It also requires an additional buffer of 5% (moved forward from later in the plan period) to ensure choice and competition in the market for land. Where there has been a record of persistent under-delivery of housing, local planning authorities should increase the buffer to 20%.
13. Following the revocation of the WMRSS and the Structure Plan, there are no adopted development plan targets in relation to housing. The Local Plan required the provision of 3900 dwellings for the period up to 2011. However, it does not take account of housing requirements beyond 2011 and the Council does not seek to rely on the housing targets within it. The absence of an adopted housing target is reflected within the Housing Land Availability Monitor and 5 Year Housing Land Supply Update (November 2012) which assessed the supply of housing land against a range of targets.
14. The Council consider the emerging SWDP provides the most up to date assessment of the housing need for the district and reflects the duty to co-operate. The housing requirements within it are based on demographic and economic modelling undertaken as part of the Worcestershire Strategic Housing Market Assessment (February 2012) and take account of the 2009 household projections published by CLG.
15. Although the SWDP is not part of the development plan, it has been submitted to the Secretary of State. The policies within it carry some weight given its reasonably advanced stage of preparation. Nonetheless, there are a number of outstanding objections to its strategy for the delivery of housing, including the overall housing requirements. These will be considered at the examination which will determine whether the approach in the SWDP is sound, or whether an alternative housing strategy should be adopted. For this reason, having regard to the guidance within the Framework I attribute the housing targets within the SWDP limited weight. I consider this approach to be consistent with the 'Axminster decision'¹ referred to by the Council where the Court found that although the emerging plan was a material consideration, the weight to be accorded to it was a matter for the decision-maker.

¹Save our Parkland Appeal Limited v East Devon District Council [2013]

16. The figures within the now revoked WMRSS were based on household projections from the 1990s and related to the period from 2001-2021. The parties agree that they cannot be considered to be up to date, or provide a reliable evidence base against which to assess the housing requirements of the district. More recent evidence within the Phase 2 Revision WMRSS Partial Review (2006 -2026) was considered at the Examination In Public (EIP). The Panel Report, in September 2009, recommended that the number of dwellings within Malvern Hills District should be increased from 4900 units to 5000 units for the period 2006-2026. Due to the decision to revoke the WMRSS, this report was not adopted, and it did not form part of the development plan.
17. Although the SWDP is reliant on a more recent evidence base than the Panel Report, the assumptions within it have not been subject to scrutiny. Therefore whilst there may be more recent household projections than those which formed the evidence base of Phase 2 Panel Report, the housing requirements within the Panel Report remain the most recent, objectively assessed housing requirements available at the present time. In my view they represent the only credible target against which to assess the supply of housing land.
18. Persistent under delivery is not defined within the Framework and the delivery of housing within Malvern District has been subject to a number of different targets in recent years. The Council had regularly exceeded the housing targets within the recently revoked WMRSS, but failed to achieve those within the Local Plan in four of the five years between 2006-2011. It also failed to meet targets within the Phase 2 Panel Report in three of the past five years. Given that the target within the Phase 2 Panel Report was not adopted by the Council, and that the Local Plan targets are time expired, I am not persuaded, on the basis of the available evidence, that there is a persistent record of under-delivery within the District.
19. The Phase 2 Panel Report required 5000 dwellings to be delivered between 2006 and 2026. This is equivalent to an annualised figure of 250 dwellings per annum. Taking account of the 1,326 dwellings completed between 2006 and April 2012 there is a residual requirement for 3,674 dwellings for the period up to 2026. This would equate to a requirement for 275 dwellings per annum (including a 5% buffer) if the existing shortfall is spread over the remainder of the plan period, or 299 dwellings per annum (including a 5% buffer) if it is delivered during the first five years.
20. The Council has identified a housing land supply sufficient for 1,223 dwellings. The supply includes a number of allocated sites from the Local Plan which have not yet been developed and site allocations from the SWDP. The appellant considers that the allocated sites within the SWDP should not be included as part of the housing land supply because they have not been tested through the development plan process. However, the sites included by the Council are limited to those sites where there have been pre-application discussions (which were subject to a fee), or are the subject of current planning applications. This would suggest that they are available and that there is a reasonable prospect that they will be delivered within the next five years. I therefore consider the inclusion of these sites as part of the Council's housing land supply to be reasonable.
21. In assessing the housing land supply the Council applied a non-implementation rate of 6%. The appellant suggested that this should be increased to 10% to reflect the findings in a study by Drivers Jonas. However, the Council figure is

based on the average expiry rate within the district between 2006/7 and 2011/12. In my view, it more accurately reflects the non-implementation rate within Malvern District. Accordingly, I consider that the housing land supply figure put forward by the Council provides a realistic basis against which to assess the proposal.

22. Taking account of the 5% buffer required by the Framework, there would be either a 4.45 or a 4.09 years supply of housing land depending on whether the existing shortfall is spread over the period up to 2026, or the first five years of the emerging plan. Therefore regardless of whether there is a persistent record of under-delivery, the Council is unable to demonstrate a 5 year supply of housing land.
23. Policy DS14 has a restraining effect on the supply of housing in that it precludes residential development outside of village boundaries. However, having regard to paragraph 49 of the Framework, policy DS14 is not up to date and I attribute it limited weight.
24. The current deficit in housing provision and the contribution that the appeal proposal would make in addressing it is a strong material consideration in favour of the appeal proposal. Therefore, I consider the principle of the proposed development to be acceptable, provided that any adverse impacts of allowing it would not significantly and demonstrably outweigh the benefits.

Sustainable Development

25. Malvern Hills District is a predominantly rural district and the Council propose that future housing targets are mostly met within existing settlements. Policy DS11 of the Local Plan directs new development firstly towards category 1 and then category 2 settlements, such as Abberley Common. Such settlements benefit from a reasonable level of public transport provision as well as a range of services and facilities. The SWDP identifies Abberley Common as a category 1 village. These are amongst the most sustainable villages within the district in terms of the provision of services. It also identifies two housing sites adjacent to the village boundary which together would provide 16 additional dwellings. Abberley Common is therefore considered to be a sustainable location for new housing.
26. The appeal site is situated adjacent to, but outside of, the village boundary, and is opposite the village school and close to the village hall. Having regard to the facilities and services available within Abberley Common, and the proximity of the appeal site to these services, I consider it occupies a sustainable location where occupants of the proposed dwelling would not necessarily be dependant upon the use of a car.
27. The appeal site occupies sloping ground and is bounded by a mature hedge. The proposed scheme is relatively low density, and the illustrative plans suggest that the dwellings would be separated from Clows Top Road by an area of landscaping. The northern part of the site would remain permanently open due to the safeguarding line in relation to the overhead cables that cross the site. The proposal is for a low density scheme and would provide a transition between the more tightly-knit development to the south and the open countryside to the north. Taking account of the density of the proposed development and the potential for significant landscaping both within the site

and adjacent to the boundary with Clows Top Road, I am satisfied that the proposal would not harm the character or appearance of Abberley Common.

28. Abberley Common is a small settlement of about 103 dwellings. Some local residents consider that the appeal proposal, together with additional housing proposed within the emerging plan, would overwhelm the existing settlement and the character of the village. The appeal site is situated at the opposite end of the village from these other sites, and due to the manner in which these sites are dispersed throughout the village, I do not consider the overall number of dwellings proposed would be so great as to overwhelm, or significantly affect the character of Abberley Common.
29. The proposal would provide fifteen dwellings, including seven affordable dwellings, within an area where there is a demonstrable need for such dwellings. The additional dwellings would support the retention and development of local services and community facilities within Abberley Common and Abberley. It would also provide employment opportunities during the construction period. Although the proposal would encroach upon the open countryside, it would not give rise to any significant harm to the character and appearance of the village. I am therefore satisfied that the proposal would accord with the presumption in favour of sustainable development within the Framework.

Whether the financial contributions sought by the Council are reasonable and necessary

30. The Council sought financial contributions towards education, public open-space and highways. In considering these obligations I have had regard to policy DS18 of the Local Plan which states that development will only be permitted where existing services and infrastructure are available to meet the needs generated by the development. I have also taken account of the Education Contributions SPD (adopted 2007) and the Open Space SPD (adopted 2008).
31. Evidence submitted by the Council demonstrates that three or more year groups at both Abberley Parochial Primary School and The Chantry High School are full. The appeal proposal would be likely to create an additional demand for places at both schools. The education contribution sought by the Council has been calculated in accordance with the formula within the Education SPD. Neither the amount, nor the need for the contribution is disputed by the appellant. The contribution would be used to increase pupil capacity at both schools. I am satisfied that it is necessary to make the development acceptable and would meet the statutory tests within Regulation 122.
32. At the Hearing the Council stated that there is an absence of public play areas within Abberley and residents tend to use facilities in nearby villages such as Great Witley which is about 1 mile from the appeal site. The appeal proposal would create an additional demand for these facilities. The contribution would be used to maintain the play area at Great Witley to its current standard and to improve the facilities at Great Witley Primary School which are used for community use. The contribution sought by the Council would accord with the criteria within the Open Space SPD and would meet the statutory tests within Regulation 122.

33. The traffic movements generated by the proposal, together with other development within the SWDP area, would add to congestion within the transport network. The Worcester Transport Model identifies a range of measures to mitigate the cumulative impact of proposed development on the environment and economy. These measures include local rail station improvements, improvements to non-Highways Agency managed strategic local highway links, key radial and orbital corridors within Worcester and Smarter Choices Measures to maximise and encourage the use of alternative modes of transport. The contribution sought has been calculated in accordance with the County Council's adopted formula and the amount is not disputed by the appellant. In the absence of appropriate mitigation the appeal proposal would, together with other schemes, have an unacceptable effect on the transport network within the SWDP area.
34. The appellant does not dispute either the amount, or the need for the contributions sought by the Council. In each case, I am satisfied that the contribution is necessary to make the development acceptable in planning terms and that the scale of the contribution is directly, fairly and reasonably related to the development in scale and kind. I therefore conclude that the infrastructure contributions sought by the Council are reasonable and necessary, and would comply with the tests within Regulation 122. For the reasons given above, I am unable to take the submitted unilateral undertaking into account. Therefore in the absence of a mechanism to ensure that the necessary contributions would be made, I conclude that the proposal would not make satisfactory provision for infrastructure and would fail to comply with Local Plan policy DS18.

Affordable Housing

35. Policy CN2 of the Local Plan requires proposals for residential development to make provision for affordable housing. The appellant does not dispute the need for affordable housing in the area and in the district as a whole. The proposed development would provide 7 affordable dwellings, and the appellant proposes that 4 of these dwellings would be social rented units. Consequently the proposal would provide a range of dwellings and would help to meet an identified local need.
36. For the reasons given above, I am not persuaded that the submitted unilateral undertaking would ensure that the affordable housing would be delivered. However, if the proposal were acceptable in all other respects, I consider that it may be possible to secure affordable housing by way of an appropriate condition.

Other Matters

37. Concern was raised by a local resident that visibility at the proposed access to the appeal site would be inadequate and potentially harmful to highway safety. The original scheme was amended following comments submitted by a transport consultant acting on behalf of residents. The Highway Authority is satisfied that the appeal scheme would provide adequate visibility in each direction in both the horizontal and vertical plane. The appeal scheme includes the re-alignment of the road and the provision of a crossing to the south of the appeal site. Whilst the junction with Abberley Common to the south would not be fully visible from the site access, based on my observations at the time of my visits, I consider that this junction would be at least partially visible to

drivers emerging from the appeal site and any emerging vehicles would be fully visible once they join the main road. I therefore share the Highway Authority's view that the proposal would not have an adverse effect on highway safety.

Conclusion

38. Paragraph 14 of the Framework sets out a presumption in favour of sustainable development. Where the relevant development plan policies are out of date, it indicates that permission should be granted for development, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies within the Framework as a whole.
39. In view of the considerable shortfall in the supply of housing land within the District, the provision of 15 new dwellings (including 7 affordable dwellings) in a sustainable location would be a considerable benefit of the proposal. The proposal would give rise to some harm due to the loss of the countryside, although this would be limited by the visual containment of the site and the proposed landscaping. There would be no significant harm to the character and appearance of Abberley Common.
40. I have found the financial contributions sought by the Council to be necessary to make the development acceptable in planning terms. However, for the reasons given above I am unable to take the unilateral undertaking submitted by the appellant into account. I therefore conclude that the failure of the proposal to make adequate provision for infrastructure to meet the needs generated by the development would significantly outweigh the benefits of the proposal.
41. For the reasons given above I conclude that the appeal should be dismissed.

Lesley Coffey

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

| | |
|----------------|------------------|
| Sian Griffiths | RCA Regeneration |
| Simon Tucker | DTT Highways |
| Rob Csondor | RCA Regeneration |

FOR THE LOCAL PLANNING AUTHORITY:

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|-----------------|--------------------------|
| Hayley Jones | Planning Officer |
| Rosemary Murray | Senior Policy Officer |
| Brian Sharp | DC Team leader, Highways |

INTERESTED PERSONS:

| | |
|------------------|---------------------|
| Paul Cummings | District Councillor |
| Stephan Osbourne | Local Resident |

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Unilateral Undertaking submitted by the Appellant
- 2 Interim Position Statement : 5 years Housing Land Supply submitted by the Council Statement
- 3 Update to Appendix 5 of Council's statement
- 4 Extract from South Worcestershire Development Plan Non-Strategic Housing Allocation Background Paper submitted by the Council
- 5 Extract from WMRSS Preferred option December 2007 submitted by the Council
- 6 Duty to co-operate Statement May 2013 submitted by the Council
- 7 Submissions on behalf of Mr Osbourne in relation to highway matters
- 8 Update to committee agenda dated February 2013 submitted by the Council
- 9 Updated calculation of 5 year housing land supply submitted by the Appellant
- 10 Affordable housing completions 2006/07-2011/12 submitted by the Council
- 11 Education Contributions SPD submitted by the Council
- 12 Proposed Significant Changes to 2011 Preferred Options submitted by the Council
- 13 Evidence presented to Rushwick Appeal (Ref: APP/J1860/A/13/2192810) in relation to transport contribution submitted by the Council
- 14 Local Plan policy DS18 submitted by the Council
- 15 Openspace SPD submitted by the Council
- 16 Number of school places within Martley Area submitted by the Council
- 17 Justification for openspace contribution submitted by the Council
- 18 Justification for educational contribution submitted by the Council

PLANS

- A Site Access Arrangement 14095-06/B