
Appeal Decision

Hearing held on 20 November 2013

Site visit made on 20 November 2013

by S J Papworth DipArch(Glos) RIBA

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

Decision date: 16 December 2013

Appeal Ref: APP/J1860/A/13/2196484

Royal Oak and Braithwaite's Yard, Main Road, Hallow, Worcester WR2 6LD

- 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 John Samuels Ltd against Malvern Hills District Council.
 - The application Ref 12/01241/OUT, is dated 18 September 2012.
 - The development proposed is the demolition of Royal Oak public house and erection of up to 4 open market units and up to 8 affordable apartments; and demolition of buildings at Braithwaite's Yard and erection of up to 9 open market units and associated works.
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Decision

1. I dismiss the appeal.

Main Issues

2. These are;
 - The effect of the proposals on the character and appearance of the Main Road area of Hallow and the extent to which the proposal can be regarded as providing high quality homes and representing good design.
 - The effect of the proposals on the provision of community facilities and services.
 - The effect of the proposals on the provision of employment land.

Reasons

Generally

3. As set out above, the application covered two addresses on Main Road, but these are not adjacent to each other, being separated by a distance of approximately 800m. The Royal Oak site is within the settlement boundary whilst the Braithwaite's Yard one is outside the southern boundary of the settlement. Together the sites are proposed to provide the required level of affordable housing, that generated by Braithwaite's Yard being described as being 'off-site' in that the provision would be sited on the Royal Oak site.
4. This is an outline application with all matters reserved, and the appellant has supplied indicative layouts. It was agreed at the Hearing that the accommodation and its arrangement into houses and apartments was a fixed

part of the application. Also agreed was the likely access in the case of both sites. At Braithwaite's yard there is little alternative than to use the existing access, whilst at the Royal Oak it is intended to close up the Main Road access, which was said to have been used only for entry, and to retain the Hallow Lane access. In both places the precise nature and position would be subject to further details as a reserved matter.

5. Both the Council and the appellant had included within their Appeal Statements commentary on whether the Council can demonstrate a five year supply of housing land as required by paragraph 47 of the National Planning Policy Framework. At the opening of the Hearing the Council referred to previous Appeal Decisions and the interim conclusions of the Inspector examining the South Worcestershire Development Plan, and acknowledged that they were unable to demonstrate such a supply against need, and that as a result paragraph 14 of the Framework is engaged. That states that development proposals that accord with the development plan should be approved without delay and where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole, or specific policies in this Framework indicate development should be restricted.

Character and Appearance

6. The numbers and types of dwelling at Braithwaite's Yard, together with the layout indicated, are not objected to by the Council. Having regard to the surroundings and the nature and shape of the site, that view is concurred with.
7. With this being an outline application with all matters reserved, the indicative layout for the Royal Oak site cannot be taken as being more than one possible solution. However, it has been put forward by the appellant as indicating a method of development and while detailed design would refine the layout, there are fixed parameters in terms of the likely access, the shape and size of the site and the nature of the surroundings.
8. There are elements of the indicative layout that lead the Council to conclude that the scheme would be cramped and that it would be developed above two storeys. The latter possibility does not appear to be dissented from by the appellant, saying that this would not be out of place. The indicative layout shows three storey construction at the corner of the main road and the side road, in much the position as the existing public house, and this, with the side blocks to the two frontages, would provide a street presence along both roads, missing at present where the public house has car parking and open space. This would be appropriate and the introduction of three storeys at the corner would not appear out of place as a feature turning the corner and alongside the building on the other corner.
9. However, there are aspects of the proposal that indicate that the scheme risks placing too much built and other development on the site to the detriment of the character and appearance of the area.
10. The present site is said to provide access across the corner for pedestrians, although this can only be an unofficial route and it is not suggested that it has attained the status of a right of way. However, whilst the appellant's proposed social landlord is stated not to be prepared to accept a public route in the

layout, the appellant did accept the proposed condition to form a footway on the Hallow lane frontage of the site. That would encroach a little into the red-line boundary and remove a hedge along that frontage. Whilst the hedge could be reinstated, the overall effect would be a loss of developable site area, which would tend to increase the density.

11. Such a route around the site would be desirable in the indicative layout as there is no access to the apartments other than by way of the vehicle access down the lane. That may be capable of being solved by way of another private access to the front door, but at the expense of space allocated either as garden or common open space.
12. The car parking provision proposed takes an appreciable amount of land although the circulation area does appear generous. An alternative of placing some of the provision in individual gardens would lessen the effect of a large unbroken area of hard standing but would also lessen the flexibility of a general area of parking as some bays would only be accessible to particular occupiers. Even then the garden space would be reduced at times when a vehicle is parked.
13. In connection with the seemingly disproportionate area set aside for parking, the location of the electricity sub-station is another constraint, which appears to have resulted in plots 11 and 12 being close to the apartments in order to position the refuse store.
14. As indicated on the layout plan, the areas of gardens are not generous and that proposed for the apartments is shown to be small, with no private access shown and is alongside the ground floor windows of two of the flats. There may be other ways of orientating the garden and flats, but on a corner location the larger area will be available on the outside of the corner where privacy from public gaze would be difficult to reconcile.
15. Therefore in conclusion, whilst the indicative layout cannot necessarily be taken to be the final design, it does indicate that the amount of accommodation on the site, and even allowing for the acceptability of three storey construction, would appear cramped and an overdevelopment of the site, having regard to the constraints presented by the site and its location. The shortcomings likely in the final design would cause harm to the character and appearance of the street-scene and the development risks not being successfully assimilated into the grain of nearby built form. The proposal would not be of the standard sought in parts 6 and 7 of the Framework on high quality homes and good design, and would fail to meet the aims of the general development requirements in Local Plan Policy DS3 parts a), b) and d) in particular; and those of Policy QL1 on the design of new development.

Community Facilities

16. Policy CN17 of the Local Plan on the retention of local facilities states that proposals which would result in the loss of a community service such as a public house will not be permitted unless it can be demonstrated to be no longer viable, or there is alternative provision accessible by walking or cycling. In Hallow there is another public house at The Crown within a very short distance, together with the Sports and Social Club nearby on the opposite side of the road. To that extent the proposed change of use resulting in the loss of the service accords with the policy allowance where there are alternative

accessible facilities and there is no need to look further at viability or the reasons for the loss.

17. However, attention has been drawn to paragraphs 28 and 70 of the Framework which requires that Councils promote the retention and development of local services and community facilities in villages, such as public houses, and guard against the unnecessary loss of valued facilities and services, particularly where this would reduce the community's ability to meet its day-to-day needs. Other Appeal Decisions have been referred to, but where they relied on some differentiation between the nature of two facilities to determine that the one that would be lost serves a distinct function, it is not possible to transfer that as a general rule to the current appeal without knowing a lot more about that circumstances in those other cases. The current appeal should be determined on its merits and in light of the circumstances in Hallow.
18. In addition, Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise. This requirement is reiterated in paragraph 2 of the Framework, with the advice that it is the Framework that is a material consideration in planning decisions. The relative weight to be afforded the Local Plan and the Framework, as set out in paragraph 215 of the latter document, depends on the degree of consistency of the Local Plan, and in this case Policy CN17, albeit dated, is not inconsistent with the aims of the Framework in seeking to promote a strong rural economy, and facilitating social interaction and creating healthy, inclusive communities as it would guard against the loss of a village's sole provider of such services.
19. The Crown appears a large and thriving public house, although it was pointed out that at the time of the site inspection lunchtime trade may have been particularly brisk due to a function at the city's university. The building has a bar, although it does not appear to cater for darts and similar pastimes. The social club was not visited but is accessible and centrally located and apparently does have games. There is also the Village Hall which, although not having a drinks license, would provide community services.
20. The Royal Oak is a small building with limited accommodation and with limited scope on its restricted site to add greatly to the facilities. It appears to be the case that it has failed to keep pace with a larger nearby facility which has clearly benefitted from investment. The building has been out of use for a while and although doubts have been cast over the appellant's aims in acquiring the building, a viable and vibrant public house would likely to have been kept operating. In conclusion, without being able to draw real comparisons with the circumstances that led Inspectors on other cases in other Council areas to determine that a single public house would be insufficient, it is not possible to identify real harm in the loss of the Royal Oak. The loss would be justified under Policy CN17 and would not undermine the aims referred to in the Framework. This factor will be weighed in the planning balance.

Employment Facilities

21. Local Plan Policy EP1 seeks the protection of existing employment land and uses and requires three exceptional circumstances to be demonstrated as alternatives; adverse environmental effect of the use; not being suitable for

continued use or a viable redevelopment for that use; or where there is a surplus of employment sites such that a marketing exercise has demonstrated the lack of a likely market. In all cases there is a need to show a community benefit and not to restrict any adjacent employment use. Paragraphs 7 and 17 of the Framework set out the three dimensions to sustainable development and the core planning principles.

22. The employment site is well placed for access to the main road and appears to have been operating in the past with no appreciable adverse effects, and this carries substantial weight in view of the proximity of dwellings along both sides. As to its continuing suitability, the location relative to the road has not changed and whilst the present site is mostly open, there is reference to poor quality former buildings having been removed with submitted photographs showing some of these. The marketing summary refers to instructions to identify tenants for the purposes of outside storage, in line with its historic occupiers, whereas the Council indicated that applications for new commercial buildings would be likely to be found acceptable in principle.
23. It appears that information before the Committee, and which informed the Officer's Report, indicated a surplus of commercial facilities, and this is also referred to in a letter from Hall Commercial to the appellant. The position of the former occupier whose details appear in that letter indicates that rental payments had not been reviewed from 1988 in the case of part of the occupancy, and that there has been a lack of investment in the past, no doubt not assisted by historically low rental income. It appears that the occupier in question has found themselves having to pay more for their alternative accommodation. There are doubts over the extent of the marketing exercise and its ability to capture the interest of a wide enough market and such an exercise is required under the third part of Policy EP1 even if there is other evidence of a surplus.
24. However, another factor is the Council's inability to demonstrate a five year housing land supply. In addition to being suitable for continued commercial use, it is not so distant from the village centre as to be unsuitable for housing use, it is within a small enclave of existing housing uses, has the advantage of being previously developed land albeit outside the settlement boundary, and is available now with a realistic prospect that housing could be delivered on the site within five years. The appellant states that, with The Royal Oak site providing the affordable housing, development is viable. The site hence accords with the attributes listed in footnote 11 to paragraph 47 of the Framework and the proposed use should be afforded significant weight in the planning balance on its ability to assist in making up the supply of housing land.

Planning Balance

25. The lack of a five year housing land supply means that paragraph 14 of the Framework is engaged, as recited in the general paragraph at the start of these Reasons. With regard to the three dimensions to sustainable development, the joint development of both sites would contribute to the economic role in providing homes for people to contribute to the viability of the settlement and its services, but at the expense of the permanent loss of two employment sites, and although their loss has been found acceptable, that does lessen the weight that can be attached to this contribution. The social role would be furthered by

the provision of housing where there is a shortfall in general, and of affordable housing in particular, and the weight attaching to the environmental role is significantly reduced by the adverse effects identified in the main issue on character and appearance. There are no identified adverse effects in keeping either the employment or public house uses in place, were a user to be found.

26. In the balance therefore, whilst the loss of employment and public house uses may be accepted in exchange for the development of housing, the doubts over the quality of the eventual development in the case of the Royal Oak site militate sufficiently against the grant of outline permission and outweighs the benefits. It is concluded that this is a case where the provision of paragraph 14 of the Framework to not grant permission where any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole is the operative provision.

Other Considerations

27. The provision of affordable housing has been accorded weight in the planning balance and it is agreed that the Royal Oak site is the more appropriate of the two for this purpose, being in the settlement close to facilities, and that the development of the Braithwaite's Yard site is an integral part of the viability equation to allow this. The appellant had submitted a completed unilateral undertaking at the Hearing to ensure the provision, with no adverse comment from the Council. However, it later transpired that the Undertaking did not coincide with that expected by the Council with regard to the percentage discount for the fixed equity housing. Although this led to an exchange of correspondence, all of which was accepted in the interests of fairness, notwithstanding that the Hearing had been closed at the conclusion of the site inspection, the final position is that the appellant has accepted the Council's requested discount and a new Undertaking is to hand. As a result, full weight has been attached to this Undertaking in ensuring the delivery of affordable housing.

Conclusions

28. In view of the housing land supply situation and the acceptability of the loss of employment and community facilities in favour of a housing use, the principle of housing development on the two sites is accepted. However, the likely shortcomings in quality of the Royal Oak scheme through the density to be developed are such that the presumption in paragraph 14 of the Framework should not prevail. Together, the benefits of the schemes do not outweigh the disbenefits to the character and appearance of the area and the standard of the accommodation at the Royal Oak site. For the reasons given above it is concluded that the appeal should be dismissed.

S J Papworth

INSPECTOR

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Rosie Murray	Malvern Hills District Council
Simon Jones	Malvern Hills District Council

FOR THE APPELLANT:

Sian Griffiths	Director RCS Regeneration
Peter Johnson	JBD Architects
Jon Tainton	Director John Samuel Ltd

INTERESTED PERSONS:

Paul Clarke	Resident
Carole Gibbs	Resident
Ian Sneddon	Resident/former occupier Braithwaites Yard
Cllr Dean Clarke	Malvern Hills District Council and Hallow Parish Council

DOCUMENTS

Document	C1	"Highways Design Guide" submitted by Council
Document	C2	"Table of Documents Submitted to Accompany Appeal" submitted by Council
Document	C3	Appeal Decision 2194904 Land off Mistletoe Row, Tenbury Wells submitted by Council
Document	C4	Appeal Decision 2192810 Land at Walshes Farm, Abberley submitted by Council
Document	C5	Letter from Inspector Roger Clews to Project Manager, South Worcestershire Development Plan, 28 October 2013 submitted by Council
Document	C6	Inspector's Interim Conclusions on the Stage 1 Matters South Worcestershire Development Plan, 28 October 2013 submitted by Council
Document	C7	Community Infrastructure Regulations assessment submitted by Council
Document	C8	Suggested conditions submitted by Council
Document	C9	e-mails after the close of the Hearing regarding the Unilateral Undertaking, from Council and appellant
Document	A1	S106 Unilateral Undertaking dated 20 November 2013 submitted by appellant (Document A4 supersedes this)
Document	A2	Photographs of Braithwaite's yard site submitted by appellant
Document	A3	e-mail appellant to PINs in response to Document C9 with correction 29 November 2013
Document	A4	S106 Unilateral Undertaking dated 5 December 2013 submitted by appellant
Document	3/1	Land Registry document 4 – 12 Braithwaite's Yard submitted by Ian Sneddon
Document	3/2	Speaking notes submitted by Cllr Dean Clarke
Document	3/3	Petition opposed to the development proposals submitted by Carole Gibbs
Document	3/4	Letter from A R Sneddon & Sons Ltd to Council, submitted by Ian Sneddon