
Appeal Decision

Inquiry held on 26 November 2013

Site visit made on 26 November 2013

by David Wildsmith BSc(Hons) MSc CEng MICE FCIHT MRTPI

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

Decision date: 12 December 2013

Appeal Ref: APP/J1860/A/13/2201174

Land to the east of Main Road, north of Brookend Lane, Kempsey, Worcestershire

- 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 Lioncourt Homes (Development No 11) Ltd against Malvern Hills District Council.
 - The application Ref 13/00417/OUT, is dated 28 March 2013.
 - The development proposed is the erection of up to 120 dwellings, access, parking, public open space with play facilities and landscaping.
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Decision

1. The appeal is allowed and outline planning permission is granted for the erection of up to 120 dwellings, access, parking, public open space with play facilities and landscaping on land to the east of Main Road, north of Brookend Lane, Kempsey, Worcestershire in accordance with the terms of the application, Ref 13/00417/OUT, dated 28 March 2013, subject to the conditions set out in the schedule at the end of this decision.

Procedural points, background and matters of clarification

2. The application was submitted in outline, with only access to be determined at this stage. I have determined the appeal on this basis.
3. Although the Council failed to determine this application within the statutory timescale, prompting the lodging of the appeal, the proposal was subsequently considered by the Council's Northern Area Development Management Committee in September 2013. The Officer's report to this Committee makes it plain that although the appeal site lies outside the settlement boundary of Kempsey, where development for general residential use would conflict with adopted development plan policies, the Council is unable to demonstrate that it has a 5 year supply of deliverable housing land.
4. Accordingly, as set out in paragraph 49 of the National Planning Policy Framework ("the Framework"), the Council's relevant policies for the supply of housing cannot be considered up to date, and applications for housing therefore have to be determined in accordance with paragraph 14 of the Framework. In essence, this states that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the Framework policies, taken as a whole.

5. The Council took these matters on board, but its development Management Committee indicated that if it had still had jurisdiction it would have refused planning permission for 3 reasons. Two of these related to detailed highway matters, whilst the third related to the absence of a number of financial contributions covering such things as off-site highway infrastructure improvements, open space provision and local education provision.
6. The appellant continued to discuss the detail of this proposal with Worcestershire County Council, as Highway Authority (HA), and made changes to the proposed junction arrangements at both Main Road and Brookend Lane. The appellant also reached an agreement with the HA regarding necessary contributions to a variety of off-site highway and public transport improvements. This led to the submission of a duplicate application (Ref 13/00918/OUT), incorporating these amended details, and the Council resolved, in October 2013, to grant outline planning permission for this latter proposal, subject to completion of a planning obligation under S106 of the Town and Country Planning Act 1990. Work has been progressing on a bilateral S106 Agreement but has not yet been completed.
7. At the same time, the appellant has continued to seek planning permission through this appeal, and has asked that 2 amended plans, found acceptable in application 13/00918/OUT, be substituted for the equivalent plans in the current case. These have been the subject of a formal consultation process and I indicated at the inquiry that I would determine the appeal on the basis of these amended plans, as I consider that no-one who has an interest in this appeal would be unacceptably adversely prejudiced by this course of action.

Main issues

8. In light of the above points I agree that this proposal should be determined in accordance with the guidance contained in paragraph 14 of the Framework. I therefore announced at the inquiry that I considered the only remaining main issues to be whether the proposal would make adequate and acceptable provision for affordable housing; and whether it would make adequate and acceptable contributions towards the provision of open space, education services and off-site highway infrastructure improvements. Both of these issues were addressed by the appellant's submission at the inquiry of a completed S106 unilateral undertaking.

Reasons

Affordable housing

9. As the Regional Spatial Strategy (RSS) for the West Midlands was revoked in May 2013, along with the relevant county level Structure Plan policies covering the Malvern Hills District Council area, the development plan comprises the Malvern Hills District Local Plan 2006 (MHDLP). With regards to affordable housing, saved MHDLP policy CN2 requires an affordable housing component of up to 50% of dwellings on housing sites of 5 dwellings or more in rural areas. This is being updated in the form of policy SWDP14 in the emerging South Worcestershire Development Plan (SWDP), which draws on the up to date evidence base for affordable housing viability in the district of Malvern Hills and seeks the provision of 40% affordable housing on sites of 15 or more units.
10. The appeal proposal would provide 40% of the units as affordable dwellings, in accordance with this emerging policy with 80% of these being Social Rent Units

and the remaining 20% being Fixed Equity Units. The Council has indicated that it finds this tenure split acceptable, and has also expressed its satisfaction and acceptance of the proposed dwelling mix which would see 59% of the units provided as 2-bed dwellings; 33% as 3-bed dwellings; 4% as 4-bed dwellings and 4% as 2-bed bungalows. I see no reason to take a contrary view.

11. Having regard to the above points I conclude that the proposed development would make adequate and acceptable provision for affordable housing, and accordingly would comply with the relevant adopted and emerging development plan policies to which I have already referred.

Financial contributions

12. The submitted unilateral undertaking also makes provision for a number of financial contributions which the Council maintains are necessary to ensure there would be no unacceptable adverse impacts arising from the proposed development. These comprise contributions towards bus stop improvements, education provision, pedestrian and cycling facilities, public transport, recreation facilities and the Worcester Transport Strategy. All contributions are in line with those requested by the consultees to the planning application and accord with adopted MHDLP policies DS18 ("Planning Obligations") and CN12 ("Provision of Public Open Space"), as well as with guidance in relevant Supplementary Planning Documents (SPDs)¹.
13. The evidence before me explains that all requested contributions would accord with both Regulation 122 of the Community Infrastructure Levy Regulations 2010, and paragraph 204 of the Framework. Both of these make it plain that for planning obligations to be taken into account they must be necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development. I see no reason to dispute the Council's claims that all proffered contributions are necessary and proportionate.
14. I therefore conclude that the proposed development would result in adequate and acceptable contributions being made towards the provision of open space, education services and off-site highway infrastructure improvements, in line with the adopted development plan policies and SPDs referred to above.

Other matters

15. I have been mindful of the concerns raised by a local Ward and District Councillor at the inquiry, concerning the proposed relocation of the southbound bus stop on Main Road, to the north of the proposed site access, and the fact that no pedestrian crossing of the A38 would form part of the off-site highway improvements. However, these are both matters which have been given careful consideration by the HA, and as the HA is content with the details of the development and package of improvements as currently proposed, I am not persuaded that the changes sought by the Councillor can be justified.
16. I have also noted the Councillor's comment that Kempsey is in urgent need of further playing field provision, in preference to the community orchard currently proposed as part of this development, with particular concern being expressed regarding future maintenance responsibilities of the open space areas. However, as the recreation contribution has to be used for off-site recreation

¹ Developer Contributions and Planning Obligations (2006); Education Contributions (2007); Open Space (2008)

purposes it could be used to help provide, improve and/or maintain playing fields within the Parish of Kempsey, if the Council considers that the need for such facilities would arise from this development and that this would be an appropriate use for this contribution.

Conclusion

17. In view of all the above points, I conclude that this proposal should be allowed, subject to the imposition of a number of conditions, as discussed at the inquiry and set out in the attached Schedule. Conditions 1 and 2 are standard conditions for outline planning permissions, whilst Condition 3 is imposed to ensure that the development has a satisfactory appearance and to safeguard biodiversity. Condition 4 is necessary for the avoidance of doubt and in the interests of proper planning, with Condition 5 being imposed to ensure that the development is of a scale and height appropriate to the site. Condition 11 will ensure that the habitat of nesting birds is not disturbed until any young have fledged, or there are no nesting birds present, before the hedgerow is removed.
18. Condition 6 will ensure that the development is provided with a satisfactory means of drainage and will also reduce the risk of creating or exacerbating a flooding problem, whilst Condition 7 will ensure that sustainability measures are taken into account in the development. Conditions 8, 16 and 23 are imposed to protect the living conditions of existing, neighbouring residents both during the construction of the development and upon completion.
19. Conditions 9, 19, 20 and 21, together, seek to ensure that satisfactory access, parking and drainage arrangements are available before the dwellings are occupied, whilst Conditions 10, 12, 13, 14, 15 and 17 are all needed in the interests of highway safety and for the convenience of highway users. Condition 18 is imposed in order to reduce vehicle movements and promote sustainable means of transport. Condition 22 is necessary so that investigation of cultural remains can be carried out at this site of archaeological interest. Finally, Condition 24 is imposed in order to safeguard the management of the open space areas and to ensure the site contains an equipped play area.
20. I have had regard to all other matters raised, but they are not sufficient to outweigh the considerations which have led me to my conclusion.

David Wildsmith

INSPECTOR

Schedule of Conditions (24 in total)

- 1) Application for the approval of the matters reserved by conditions of this permission shall be made to the Local Planning Authority before the expiration of 3 years from the date of this permission. This shall be in the form of a "reserved matters" application. The development hereby permitted shall be begun not later than whichever is the latest of the following dates:-
 - (i) The expiration of 3 years from the date of this permission, or
 - (ii) The expiration of 2 years from the final approval of the reserved matters, or
 - (iii) In the case of approval on different dates, the final approval of the last such matter to be approved.
- 2) Approval of the details of the appearance, layout and scale of the buildings and the landscaping of the site (hereinafter called "the reserved matters") shall be obtained from the Local Planning Authority in writing before any development is commenced.
- 3) In addition to specifying new soft and hard landscaping within the building zone, the details submitted pursuant to condition 2 relating to landscaping shall incorporate the reinstatement of a roadside hedge behind the visibility splays, composed of locally native species.
- 4) The development hereby approved shall be carried out in accordance with the following plans: the un-numbered Site Boundary Plan, dated 25/03/13; the un-numbered Concept Master Plan dated 25/03/13; Drawing No 0443-004H entitled Proposed Main Road Site Access; Figure 4B entitled Proposed Access via Brookend Lane; and the Development Footprint and Green Infrastructure plan dated 18/09/13 unless otherwise required by conditions attached to this permission.
- 5) Prior to the commencement of the development hereby permitted 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 in writing by the Local Planning Authority. The development shall thereafter be carried out in accordance with the approved details.
- 6) Development shall not commence until a scheme for foul and surface water drainage, incorporating sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented as approved before any dwelling served by the relevant part of the scheme is first occupied.
- 7) 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 shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented and retained thereafter.
- 8) Demolition/ground works/construction work shall not take place outside the following hours:
 - (i) Monday to Friday 07.30-18.00 hrs;
 - (ii) Saturdays 08.00-13.00hrs;and at no time at all on Sundays or Public Holidays.

- 9) The dwellings hereby permitted shall not be occupied until the accesses, shared driveways, service road access and parking facilities to be approved pursuant to any reserved matters applications 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.
- 10) Prior to the commencement of the development hereby permitted, engineering details of the highway improvements and off-site highway works, including road widening; pedestrian refuge; white lining; street lighting; road signing; on-road cycling facilities; and associated civil engineering works shown on Drawing No 0443-004H shall be submitted to and approved in writing by the Local Planning Authority. No dwellings shall be occupied until these works have been implemented in accordance with the approved details.
- 11) Any sections of existing hedgerow required to be removed to facilitate the new access onto the A38 (Main Road) 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; and any such hedge removal shall be carried out in accordance with the approved details.
- 12) Before any other works hereby approved are commenced, visibility splays at the A38 (Main Road) site access shall be provided from a point 0.6 metres above ground level at the centre of the access to the appeal site and 2.4 metres back from the nearside edge of the adjoining carriageway, (measured perpendicularly), for a distance of 120 metres in a northerly direction and 64 metres in a southerly 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.
- 13) Before any other works hereby approved are commenced, visibility splays at the Brookend Lane access shall be provided from a point 0.6 metres above ground level at the centre of the access to the appeal site and 2.4 metres back from the nearside edge of the adjoining carriageway, (measured perpendicularly), for a distance of 63 metres in a north-easterly direction and 43 metres in a south-westerly 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.
- 14) Prior to the commencement of the development hereby permitted, engineering details of the access arrangements from the A38 (Main Road), including the closure of the existing layby to the south of the site entrance, relocation of bus stop and associated works, the principles of which are detailed on approved Drawing No 0443-004H, shall be submitted to and approved in writing by the Local Planning Authority. These details shall include measures indicating how adequate pedestrian visibility between the junction and crossing point at the bellmouth of the junction will be provided for. No dwellings shall be occupied until these works have been implemented in accordance with the approved details.

- 15) Prior to the commencement of the development hereby permitted, engineering details of the formation of the emergency access onto Brookend Lane and the provision of a new length of footway linking this access to the existing footway that terminates a short distance to the south-west of the proposed access point; together with details of the mechanism permitting use of the access by emergency vehicles but precluding use by other motor vehicles, shall be submitted to and approved in writing by the Local Planning Authority. No dwellings shall be occupied until these works have been implemented in accordance with the approved details.
- 16) A Construction Environmental Management Plan shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of development. This shall include the following:-
 - (i) Measures to ensure that vehicles leaving the site do not deposit mud or other detritus on the public highway;
 - (ii) Details of site operative parking areas, material storage areas and the location of site operatives' facilities (offices, toilets etc);

The measures set out in the approved Plan shall be carried out in full during the construction of the development hereby approved. Site operatives' parking, material storage and the positioning of operatives' facilities shall only take place on the site in locations approved in writing by the Local Planning Authority.
- 17) The means of vehicular access for construction traffic to the development hereby approved shall only be from the A38 (Main Road) via the new access point.
- 18) The development hereby permitted shall not be brought into use until a travel plan that promotes sustainable forms of access to the site has been submitted to and approved in writing by the Local Planning Authority. This plan shall thereafter be implemented and updated in agreement with Worcestershire County Council's Travel Plan co-ordinator.
- 19) Development shall not begin until a scheme setting out the engineering details and specification of the proposed roads and highway drains has been submitted to and approved in writing by the Local Planning Authority. No dwelling shall be occupied until the relevant roads and drainage system serving that dwelling have been constructed in accordance with the approved details.
- 20) Prior to the first occupation of any dwelling hereby approved, space shall be laid out within the curtilage of each property for both car parking and secure parking for cycles in accordance with the standards set out in the Worcestershire County Council Highway Design Guide. The parking areas shall be properly consolidated, surfaced and drained in accordance with details to be submitted to and approved in writing by the Local Planning Authority; and these areas shall thereafter be kept available for the parking of vehicles and bicycles.
- 21) All roadworks, together with the making good of surfacing, grassing and landscaping, shall be completed in accordance with a scheme and specification to be 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.
- 22) No development shall take place until a programme of archaeological work, including a Written Scheme of Investigation, has been submitted to and

approved in writing by the Local Planning Authority. 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;
- (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. No dwellings shall be occupied until the site investigation and post investigation assessment has 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.

- 23) There shall be no vehicular access between the proposed development and The Limes.
- 24) The details submitted pursuant to Condition 2, in respect of the reserved matter of landscaping, shall include a long-term management plan for the maintenance of the landscape shaded green on the Development Footprint and Green Infrastructure plan dated 18/09/13 and shall make provision for the inclusion of a children's equipped play area. These details shall include a plan detailing the position and extent of the play area, a specification for the equipment and a long-term management plan for the maintenance of the play area.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Mr H Richards of Counsel	instructed by Malvern Hills District Council
He called:	
Mr S Jones	Principal Planning Officer, Malvern Hills District Council
BA DipTP MRTPI	

FOR THE APPELLANT:

Mr S Choongh of Counsel	instructed by Mr J Tait, Planning Prospects Ltd
He called:	
Mr J Tait	Director, Planning Prospects Ltd
BA(Hons) DipTP MRTPI	

INTERESTED PERSONS:

Cllr D Harrison	Local District Councillor for Kempsey Ward
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DOCUMENTS SUBMITTED AT THE INQUIRY

Doc	1	Bundle of 2 additional written representations, opposing the proposed development
Doc	2	Completed and signed unilateral undertaking, submitted by the appellant
Doc	3	Suggested conditions, including a Development Footprint and Green Infrastructure plan dated 18/09/13