



Appeal Decision

Site visit made on 14 July 2021

by M Aqbal BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 January 2022

Appeal Ref: APP/W1850/W/21/3272317

Land off Mill Lane, Colwall, Worcestershire WR13 6EQ

- 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 Mr Andrew Cockayne, Kendrick Homes Limited against the decision of Herefordshire Council.
 - The application Ref 200156, dated 19 December 2019, was refused by notice dated 16 October 2020.
 - The development proposed is outline planning application for residential development with all matters reserved except for access.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application is submitted in 'outline' including access details, with layout, scale, landscaping and appearance reserved for future consideration. Included within the submissions are Proposed Site Layout (dwg no. 371-01-01 Rev C) and Perspective Views (dwg nos. 371-01-02 and 371-01-03) which aim to show how the site could be developed to deliver 37 dwellings. I have treated these as being illustrative.
3. Following a positive referendum result on 6 May 2021, the Colwall Neighbourhood Development Plan 2021-2031 ('Colwall NDP') was 'made' on 14 June 2021. This forms part of the development plan and is afforded full weight in determining this appeal.

Application for costs

4. An application for costs was made by Herefordshire Council against Andrew Cockayne, Kendrick Homes Limited. This application is the subject of a separate Decision.

Main Issues

5. The main issues are the effect of the proposal on the character and appearance of the area, including the landscape and scenic beauty of the Malvern Hills Area of Outstanding Natural Beauty ('the AONB'); whether the proposal would be in the public interest and exceptional circumstances exist to support it; and whether the proposal makes appropriate provision for affordable housing, infrastructure and community facilities to make the development acceptable in planning terms.

Reasons

Character and appearance

6. The appeal site comprises a large field located beyond, but adjacent to the settlement boundary of Colwall as indicated in the Colwall NDP. The site, along with the whole of Colwall and surrounding area fall within the AONB.
7. Paragraph 176 of the Framework states that: 'Great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty which have the highest status of protection in relation to these issues.'
8. At a local level the Malvern Hills AONB Management Plan (2019-24) provides guidance on the management of the AONB. Amongst other things this states that development proposals that may affect land in the AONB, including those in its setting, should protect and/or enhance key views and landscape character.
9. Based on local landscape character areas, the appeal site is open rural farmland. The north west boundary is formed by a hedgerow between the appeal site and adjacent field which is also part of the open countryside and typical of the open farmland landscape character type. The south west boundary is a mixed native hedgerow to the edge of Mill Lane, with an existing field gate and two oak trees that are distinctive landscape features. The north east boundary is a well vegetated, beyond which is a small parcel of residential open space and agricultural land. The south east boundary is also a planted hedgerow and beyond this is a primary school and village hall.
10. Therefore, because of its open and verdant nature, along with the adjacent fields, the appeal site positively contributes to the open rural farmland landscape character and the scenic beauty of the AONB.
11. Taking account of the appellant's Landscape Evidence, I acknowledge that the built extent of Colwall has evolved, this includes a number of developments that have been introduced over the later part of the twentieth century. There have also been more recent developments. For instance, Colwall Gardens, which extends westwards from Walwyn Road. However, along Mill Lane development is predominantly linear.
12. Moreover, whilst there is development adjacent to the appeal site, this largely falls within the local landscape character area 'Link junctions mixed features'. This is generally low-density development (including the three recently built houses opposite the appeal site) or community land use, which create a transition zone between the more built-up parts of the settlement (Landscape Character Area Brookside Cul de Sacs) and the open countryside and assist in defining the settlement pattern.
13. Because of its landscape character, appearance and location, the appeal site reinforces the rural edge and setting to Colwall. Therefore, development of the extent proposed in this particular location would appear separate from the more built-up parts of the village and would have a substantial erosive effect on the landscape character of the site and the settlement pattern.
14. The appellant's Visibility Mapping Exercise drawing PJR-16 shows that the appeal site and development within it would be mainly visible from Mill Lane

- and the public footpaths alongside and to the west and north of the appeal site; and from the elevated west facing slopes of the Malvern Hills, including Pinnacle Hill.
15. Despite the retention of feature trees, the proposed access would result in the part removal of the existing hedgerow along the site's Mill Lane frontage. Further erosion of this hedgerow is likely to accommodate and maintain required sightlines. There would also be a widening of the lane at the new entrance, together with infrastructure impacts of new footpaths. These works individually and in the context of the nearby school car park and entrance, along with the access to the three houses opposite the appeal site, would substantially erode the characteristically rural approach to Colwall along Mill Lane in landscape and visual terms.
 16. Although Mill Lane may not be the principal route in and out of Colwall, the appeal site, based on the Colwall NDP is located on an important visual corridor (Gateway 4) into the village which includes an identified important viewpoint (VP12). Heading south east along Mill Lane this offers panoramic views of Malvern Hills across good quality open countryside (which includes the appeal site). Both lowland and hill landscapes are important to the village's context and setting. While this view has changed due to presence of Colwall's new primary school, this does not significantly undermine this given its low-density nature.
 17. In contrast, development of the extent proposed would introduce a suburban appearance of upper floors and roofs interrupting the existing rural setting. Overall, the effect would be one of pulling the urban edge appreciably further west in views from VP12 which Policy CD1 of the Colwall NDP seeks to protect.
 18. There would also be alteration in views for users of the nearest public footpaths (CW29C and CW30B). Here the introduction of the development would change the character and amenity of these footpaths in terms of the views afforded to walkers. I acknowledge that depending on the direction of travel, walkers on these paths would have some awareness of the existing extent of the village. Nonetheless and despite the changes to landscape cover between seasons, the introduction of houses at the appeal site would cause a substantial and permanent loss to these views as it changes from an agricultural field to residential development and would dilute the largely rural experience these provide, resulting in minor to substantial visual impacts depending on the location of these footpaths relative to the appeal site.
 19. Middle distance views from parts of the network of footpaths on the more elevated slopes of the Malvern Hills would be available of the appeal site and development within it. In these views, the appeal site plays a small part in a much wider panoramic. Despite this, the proposed development would be apparent because of its scale and visual separation from the more built-up parts of the village. In my opinion, the permanent erosion of part of this rural and important landscape would result in a moderate visual impact in views from Malvern Hills.
 20. Based on the appellant's submissions, including the illustrative layout, a landscape-led approach has been proposed. However, on the information before me, I am not persuaded that landscaping would be effective in the short to medium term in mitigating the effects of the development and even on maturity it is likely to eliminate only some views of the development.

21. My findings in respect of the effect of the proposal on the character and appearance of the area are supported by the Colwall NDP. The formulation of this was informed by landscape evidence which underpinned the assessment of potential housing sites and the capacity of those sites to absorb development. The Malvern Hills AONB Management Plan (2019-24) also supports this approach. In particular, the sensitivity of the appeal site was considered to be high and its capacity for development to be low.
22. For the above reasons, the proposal in terms of its nature and setting including the provision of an access and associated infrastructure would result in significant suburbanisation of this part of the AONB. This would significantly encroach into the adjoining countryside. The introduction of residential development would include additional activity, noise and lighting which together would have a significant adverse effect on the appearance, setting and enjoyment of the AONB and setting of Colwall.
23. Such harm would be focused on the appeal site but would also extend to parts of Mill Lane and the aforementioned footpaths and from wider viewpoints. Consequently, the landscape character of the appeal site would experience permanent and substantial adverse effects from the proposed development with substantial to minor adverse effects arising to the surrounding area in landscape and visual terms. Therefore, the proposal fails to conserve and enhance the AONB and would also erode the settlement pattern and setting of Colwall.
24. As such, the proposal is contrary to the following policies of the Herefordshire Local Plan-Core Strategy ('CS'). Policy RA2 which amongst other things supports developments which are appropriate to their context and make a positive contribution to the surrounding environment, Policies SS6 and LD1 which along with other things place emphasis upon conserving and enhancing the natural landscape within the AONB. I also find the proposal contrary to similar design aims of Policy CD2 of the Colwall NDP. For reasons set out above the proposal conflicts with Policy CD1 of the NDP. Accordingly, I also find conflict with Policy SS1 which only permits development that accords with the development plan. Finally, the proposal is also contrary to the aims and objectives of the Framework for conserving and enhancing the natural environment.

Exceptional circumstances and public benefits

25. CS policies SS6 and LD1, when read together seek to conserve and enhance the AONB in line with the provisions of the Framework. Also, both main parties concur that the proposal is for 'major development' and I have no reason to disagree.
26. Paragraph 177 of the Framework requires that when considering applications for development within National Parks, the Broads and Areas of Outstanding Natural Beauty, permission should be refused for major development other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. Consideration of such applications should include an assessment of: a) the need for the development, including in terms of any national considerations, and the impact of permitting it, or refusing it, upon the local economy; b) the cost of, and scope for, developing outside the designated area, or meeting the need for it in some other way; and c) any

detrimental effect on the environment, the landscape and recreational opportunities, and the extent to which that could be moderated.

27. In respect of Paragraph 177 a) Policy RA2 of the CS states that the minimum growth target in each rural Housing Market Area ('HMA') will be used to inform the level of housing development to be delivered in the various settlements. Further, that Neighbourhood Development Plans will allocate land for new housing or otherwise demonstrate delivery to provide levels of housing to meet the various targets.
28. Colwall lies within the Ledbury HMA and the CS requires an indicative target growth figure for housing of 14% for this HMA over the Plan period.
29. Based on existing commitments and allowances for a redevelopment scheme and Windfalls, the Colwall NDP identifies a need to positively plan for at least 26 dwellings. The Colwall NDP includes allocations Area 3A and 3B (the disused former school and an adjacent area) and Area 12 (Grovesend Farm) to meet this requirement. Based on indicative layouts these could provide for up to 41 dwellings to meet the housing needs of Colwall.
30. Although Policy CSB1 of the Colwall NDP also refers to supporting the provision of at least 70 new houses over the Plan period. This relates to proposals within the settlement boundary and therefore does not lend support to the appeal scheme.
31. Given the outline nature of the proposal, the overall housing mix is not known. Therefore, there is no certainty that this would meet the aspirations of Policy CH1 of the Colwall NDP.
32. Nevertheless, a scheme of up to 37 dwellings would support the Government's objective to significantly boost the supply of homes. In line with CS Policy H1, a 40% delivery of affordable housing, subject to the provision of a completed legal agreement would amount to 15 dwellings.
33. Whilst there has been a substantial shortfall in the delivery of affordable housing in Herefordshire, the provision of up to 15 dwellings would only make a modest contribution towards the Council's affordable housing shortfall. Furthermore, while there is some requirement for affordable housing in Colwall, I have limited information on the extent of this.
34. The proposal would have potential economic benefits through the provision of jobs and local purchasing during the construction period. Once complete the development would increase the local population. Given that the appeal site is accessible by public transport and located close to local services and businesses, households at the site would also support these and are less likely to be reliant on private motor vehicles. Subject to a completed legal agreement, the proposal would also provide support for infrastructure and community facilities.
35. However, the proposed housing provision and associated benefits are directly attributable to the scheme before me and there is no strong reasons to suggest that such provisions and benefits could not be secured through the sites allocated for development in the Colwall NDP. Therefore, I am also not persuaded that the dismissal of this appeal would have any significant effect on the local economy. Nonetheless, given their nature and scale, I attach

moderate weight to the housing provision and benefits arising from the proposal.

36. In support of the proposal the appellant has also referred to the Council's failure to deliver new housing development. Indeed, when determining the application, the Council acknowledged that it did not have a 5-year Housing Land Supply ('HLS'). Subsequently, the Council's 5 Year HLS (July 2021) shows 6.90 years. The appellant has undertaken an assessment of this and asserts that the Council has a 4.95 years of housing land supply.
37. Even if I were to accept the appellant's HLS position, this is close to 5 years. Furthermore, the Colwall NDP concludes that the proposed housing target in the NDP will meet the indicative target proposed for the rural HMA in the CS. Together, these factors suggest that there is scope for meeting the need for housing in Colwall in some other way.
38. For the above reasons, the proposal is not supported by Paragraphs 177 a) and b) of the Framework.
39. In respect of Paragraph 177 c) of the Framework, based on my findings on the first main issue, the proposal would have a detrimental effect on the landscape. Furthermore, the footpaths near the appeal site provide recreational opportunities which would be adversely affected by the proposal.
40. For the above reasons, whilst I acknowledge that there would be some benefits from the proposal. Overall, the exceptional circumstances to justify major development within the AONB have not been demonstrated and the proposal is in conflict with Paragraph 177 of the Framework. Accordingly, the proposal is also contrary to CS Policies RA2, SS6 and LD1.

Delivery of affordable housing, infrastructure and community facilities

41. The submitted Unilateral Undertaking ('UU') includes a covenant agreeing that 40% of the dwellings authorised by the planning permission shall constitute affordable housing. In addition, it includes obligations for financial contributions towards transport infrastructure, education, waste and recycling, library, green infrastructure, outdoor sports provision, medical provision and medical services, payable per dwelling type.
42. Having regard to the evidence before me, in particular the Council's report to Planning and Regulatory Committee dated 13 October 2020, it has been demonstrated that the obligations in the submitted UU are necessary in order to make the development acceptable in planning terms, directly related to the development, and reasonable in scale and kind. They accord with the tests that are set out in the Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations (as amended). I have taken these factors into account when determining the appeal.
43. Nonetheless, and whilst I do not dispute the appellant's intentions to meet the above obligations, the submitted UU is undated and unsigned. Therefore, I cannot be certain that this would be adequate to secure the delivery of the required obligations. Had the proposal been acceptable in other respects, the appellant would have been given the opportunity to address this. Accordingly, based on the incomplete UU, I cannot be certain that the proposal would deliver affordable housing in accordance with CS Policy H1, contributions for

open space, sport and recreation facilities in accordance with CS policies OS1 and OS2 and other infrastructure and community facilities under CS Policy ID1.

Other Matters

44. I have taken account of the considerable local support for the proposal; this includes reasons and a preference for development at the appeal site instead of the site at Grovesend Farm. However, that site was allocated following a detailed plan making and site selection process which included a Landscape Sensitivity and Capacity Assessment, as part of the Colwall NDP and therefore is afforded substantial weight. Notwithstanding this, having considered the appeal proposal on its planning merits and the information before me, these factors do not address the harm I have identified and conflict with the development plan.

Planning balance and conclusion

45. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that decisions on planning applications should be made in accordance with the development plan unless material considerations indicate otherwise.
46. The proposal is for major development which would fail to preserve or enhance the landscape and scenic beauty of the AONB. It would also harm the character and appearance of the area. Based on the submitted UU, I cannot be certain that this provides an adequate mechanism to secure affordable housing, infrastructure and community facilities to make the development acceptable in planning terms. Therefore, the proposal is contrary to the development plan. In any event, given the lack of exceptional circumstances, Paragraph 177 of the Framework directs that planning permission for this type of development within the AONB should be refused.
47. There would be some economic, social and other benefits arising from this type of proposal. However, these considerations and some local support for the proposal are not sufficient to mean that the proposal should be determined other than in accordance with the development plan. I, therefore, conclude that the appeal should be dismissed.

M Aqbal
INSPECTOR