



Appeal Decision

Hearing held on 6 June 2023

Site visit made on 6 June 2023

by Benjamin Webb BA(Hons) MA MA MSc PGDip(UD) MRTPI IHBC

an Inspector appointed by the Secretary of State

Decision date: 22nd June 2023

Appeal Ref: APP/H1840/W/22/3313745

Land off Broadway Lane, Fladbury, Pershore, Worcestershire WR10 2QF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Lone Star Land Ltd against the decision of Wychavon District Council.
 - The application Ref 21/02924/FUL, dated 10 December 2021, was refused by notice dated 7 October 2022.
 - The development proposed is the erection of 34 affordable homes, new access off Broadway Lane and associated works including SuDS pond and new landscaping.
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Decision

1. The appeal is allowed, and planning permission is granted for the erection of 34 affordable homes, new access off Broadway Lane and associated works including SuDS pond and new landscaping at, Land off Broadway Lane, Fladbury, Pershore, Worcestershire, WR10 2QF, in accordance with the terms of the application, Ref 21/02924/FUL, dated 10 December 2021, subject to the conditions set out in the schedule at the end of this decision.

Preliminary Matters

2. The application was partly refused on grounds of the loss of agricultural land. This reason was however withdrawn by the Council at the Hearing. This was in acknowledgement of the fact that the terms of the policy with which conflict had been identified would not be breached. I shall therefore consider the matter below only to the extent that it remains relevant.
3. At the Hearing an application for costs was made by Lone Star Land Ltd against Wychavon District Council. Both the application and the Council's response were delivered orally. This application is the subject of a separate Decision.

Main Issue

4. The main issue is whether the site would be a suitable location for the proposed development having regard to:
 - (a) the scale and type of development; and
 - (b) scope for future accessibility to services and facilities by means other than the use of private motor vehicles.

Reasons

(a) Scale and type of development

5. Policy SWDP2 of the South Worcestershire Development Plan 2016 (the SWDP) sets out the District's spatial strategy. This directs development to settlements based on their position within a defined hierarchy, with the objectives of achieving a sustainable distribution of development and protection of the countryside. The strategy is facilitated by use of development boundaries outside of which development is more strictly controlled. At all levels of the hierarchy within rural areas the provision of affordable housing on exception sites is however acceptable in principle.
6. The appeal site lies outside the development boundary of Fladbury but has been promoted on the basis of its provision of affordable housing. In this regard Policy SWDP16 of the SWDP sets out requirements in relation to rural exception sites. Here the sole matter in dispute is whether or not the site can be regarded as 'small', and therefore consistent with the opening text of part A of Policy SWDP16, which employs the term 'small sites' in relation to exception sites.
7. Neither the SWDP nor the Council's Affordable Housing Supplementary Planning Document 2016 (the SPD) sets out a definition of the term small sites. The SPD instead indicates that consideration of this will partly depend on the size of the settlement. The issue is thus one of relative scale and proportion, albeit the Council again has no clear guidelines on how to assess this, or which seek to place any cap on settlement growth.
8. No objection has been raised by the Council on grounds of the physical or visual relationship that would exist between the development and the rest of the village. Though around 40% of the site area would be taken by green infrastructure in accordance with policy requirements, the development would represent the largest single grouping of modern housing along Broadway Lane. It could nonetheless be assimilated into the existing layout reasonably well without being perceived as disproportionate in scale. This would be more the case when considered within the context of the village as a whole.
9. The Council has instead advanced the number of units and population as more relevant measures. In this regard the number of proposed dwellings would increase the housing stock within the village by around 9%, and, depending on the source of new occupants, the population could potentially rise by 9-12%. However, insofar as the scale of the development would be both physically and visually acceptable, it is unclear why the scale of increase in the local housing stock should itself be considered unacceptable. The increase in population that this would support would otherwise be modest. In the absence of any clear guidance to the contrary, I therefore find that the site qualifies as 'small' for the purposes of Policy SWDP16 of the SWDP.
10. Other sources have been cited as an alternative basis for interpretation of Policy SWDP 16. These include the definitions of major development and entry-level exception sites set out within the National Planning Policy Framework (the Framework), as too the Framework's broader reference to small and medium sites. In common with Policy SWDP16 the Framework itself uses the term 'small' in relation to rural exception sites but without specifically defining it. However, the scheme would not provide an entry-level exception site, and the

Framework's consideration of major development and small and medium sized sites within separate contexts cannot be taken to provide an indirect definition. Consideration of the Framework does not therefore alter my findings above.

11. The Council's development plan is under review and the draft contains numerical criteria as a future basis for considering the size of exception sites. I was informed that under these criteria the site would not be considered small. The draft plan has however yet to be examined and its contents are subject of unresolved objections. Its contents therefore carry very little weight at the current time, and as such they do not alter my findings above.
12. I have been referred to an appeal decision relating to Station Road in Bretforton, where another Inspector sought to interpret Policy SWDP16. That scheme involved 40 affordable homes, but a broadly similar increase in the housing stock, and was partly dismissed on the basis of its size. However, in that case there would have been a pronounced cumulative effect when taking into account an existing allocation for 76 dwellings, and an adverse impact on the character and appearance of the area. As such, the circumstances differ.
13. The Council additionally suggested at the Hearing that the development would result in the overprovision of affordable housing. This is insofar as the number of units would exceed the level of current need within the parish. This was however at odds with the views of its housing team who considered need as demonstrated by both Fladbury and the surrounding parishes. Notwithstanding differences in the preferred tenure mix, the level of provision would not exceed the level of need when considered on this basis.
14. For the reasons outlined above I conclude that the site would be an appropriate location for the proposed development based on its scale and type. In this regard it would comply with Policy SWDP16 as outlined above, and thus also with Policy SWDP2 as again considered above.

(b) Access to services and facilities

15. Amongst other things, Policy SWDP4 of the SWDP states that proposals must demonstrate that they offer genuinely sustainable travel choices. There is no definition of what or how many of these choices there should be, or at what spatial scale they should exist in order to achieve compliance.
16. Fladbury contains a modest range of facilities and services, including a primary school, 2 pubs, a church, village hall and pie/sausage shop, most of which could be easily reached from the site on foot via lit pavements, or by cycle. Considered within the context of the village, the development would therefore again be well integrated, providing its future occupants with genuinely sustainable travel choices.
17. Considered more broadly, future occupants of the development would be most likely reliant on private vehicles to travel elsewhere in order to access a wider range of services and facilities. In this regard they would be little different to existing residents. Indeed, though Fladbury was well connected to larger settlements by public transport in the past, the village is now served only by a school bus. As it is unlikely that all future occupants would operate electric vehicles, travel would inevitably give rise to adverse environmental impacts through exhaust emissions.

18. Though the Highways Authority (HA) shares the District Council's concerns, it has identified scope for mitigation in line with the broader provisions of Policy SWDP4 and the Local Transport Plan (LTP), each of which references community transport provision. Aside from seeking a contribution towards the existing school bus service, the HA has also sought a contribution towards establishing a community bus service. Both would be secured by a submitted Section 106 Agreement (S106), which I shall consider further below.
19. I am additionally mindful of paragraph 105 of the Framework which states that opportunities to maximise sustainable transport solutions will vary between urban and rural areas, and that this should be taken into account in decision making. Moreover, the Framework's further statement that in rural areas decisions should be responsive to local circumstances and support housing developments that reflect local needs, is not made dependent on the existing availability of public transport.
20. It is otherwise the case that Policy SWDP2 provides the overarching framework within which Policy DWDP4 is applied. Within this context, travel does not form one of the criteria on which rural exception sites are judged within Policy SWDP16. Indeed, if it did, this would serve to restrict their provision in relation to settlements whose position within the hierarchy already reflects the limited nature of existing travel choices. As this would both clearly undermine delivery of the spatial strategy, and be at odds with national policy, any tension between local policy requirements is logically resolved in favour of Policy SWDP16. In this regard I have already established the scheme's compliance above.
21. Though the Council additionally suggested at the Hearing that local need for affordable housing would be better met within larger settlements, this is not the position set out within Policy SWDP2, and would be contrary to the rationale for providing affordable housing on rural exception sites. In this regard the Council could not identify an alternative location within Fladbury or the surrounding parishes that would be more appropriate for the development. Directing those in need of affordable housing to locations elsewhere would clearly not directly meet the needs of the rural community, regardless of whether those locations would provide better access to public transport.
22. The Council indicated that as part of its review of the development plan it will downgrade Fladbury's position within the settlement hierarchy due to loss of the bus service. However, even if I was to consider it appropriate to assess the scheme on this basis, it would make no difference to my findings above.
23. For the reasons set out above I conclude that whilst the location of the development would give rise to some limited conflict with Policy SWDP4 on grounds of access to public transport, I place greater weight on the scheme's compliance with Policies SWDP16 and SWDP2. The scope that would exist for future occupants of the development to access to services and facilities by means other than use of private motor vehicles would not therefore render the location unacceptable when considered against the development plan taken as a whole.

Other Matters

24. Interested parties have raised a number of additional concerns including highway safety, parking, flooding, and the capacity of utilities. The evidence

before me, including the comments of the Highways Authority, however, provide me with no reason to believe that the development would be unacceptable on any of these grounds.

Agricultural land

25. The development would result in the loss of Grade I agricultural land, with the scale of the loss again inflated by green infrastructure provision. As noted above, the Council has accepted that the loss of best and most versatile agricultural land would not breach the threshold set within Policy SWDP13 of the SWDP. Though it nonetheless considers that the loss should weigh against the scheme, given the clearly lack of policy conflict this a consideration which can carry no more than negligible weight.

Ecology

26. The submitted ecological appraisal identified no protected species on site. It nonetheless floated the possibility that Great Crested Newts might use ponds in the broader area, and the possibility of their presence on site. This was subsequently ruled out by further testing in June 2022, however the results are valid for one year only and are soon to expire. The main survey itself will expire in October 2023. Furthermore, insofar as the latter outlines mitigation and enhancement, the recommendations are preliminary only. Notwithstanding some additional work undertaken in relation to the potential for biodiversity net gain in August 2022, a single, coherent and updated strategy will be required. This can be appropriately secured by condition.

Housing supply

27. The Council lacks a demonstrable 5-year supply of deliverable housing sites (5YLS), with the supply currently standing at 3.6 years. The Framework therefore indicates that for the purposes of decision making the policies most important for determining the application are deemed 'out-of-date'. In this regard, I am nonetheless satisfied that the policies I have considered above are broadly consistent with the Framework.
28. The scheme would provide 34 new dwellings. Aside from making a very modest contribution towards meeting the shortfall in 5YLS, the scheme would also make an important contribution towards addressing a local shortfall in the provision of affordable housing. This, I have no doubt, would also help to maintain and further enhance the vitality of the village and surrounding area. These are considerations which together attract great weight. The limited nature of the adverse environmental effects of granting permission would therefore be significantly and demonstrably outweighed by the benefits.
29. Given that I have already concluded that the scheme would comply with the development plan taken as a whole, the above serves to provide an additional indication that the appeal should be allowed.

Planning obligations

30. The submitted S106 secures the provision of the proposed affordable housing. As this is the basis upon which I have found the scheme to be acceptable, the obligation passes the tests set out in Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and paragraph 57 of the Framework (the tests).

31. The S106 contains a further obligation securing a contribution towards local education provision. This reflects the cost of expansion to cater for the potential increase in the school age population supported by the liable parts of the development. The contribution would be in line with the SPD, and the Education Planning Obligations Policy Worcestershire 2020 document. The need for the contribution has however been challenged by the appellant on the basis that the development would be occupied by persons who are already resident within the area. The qualifying criteria for occupancy set out within the S106 would indeed give those already locally resident some priority. However, as the criteria are cascading, they do not act to restrict future occupancy of the proposed affordable housing to a single group. Nor can it be assumed that individuals moving into the affordable housing, from whatever location, would already have children, or that they would not subsequently have children. The provision of additional dwellings would ultimately support population growth. As such, I find that the obligation passes the tests.
32. The S106 secures provision and future maintenance of open space, in line with the green infrastructure requirements of Policy SWDP5 of the SWDP, and the Developer Contributions Supplementary Planning Document 2018 (the SPD). It also secures a contribution towards provision of a community bus and school transport. As set out above, this would help mitigate sustainability concerns in line with Policy SWDP4, and as further informed by the LTP and the SPD. The S106 lastly secures payment of a monitoring contribution, the basis for which is set out within the Planning Practice Guidance. I am satisfied that all the above obligations pass the tests.

Conditions

33. Conditions (1) and (2) are standard conditions setting out the time period for commencement of the development and identifying the approved plans for sake of certainty. The wording of Condition (2) allows for minor modifications to be made in accordance with other conditions as necessary.
34. Condition (3) requires the provision of an Ecological Mitigation and Enhancement Strategy, the necessity for which I have covered above. This is required pre-commencement due to the need to confirm the absence of protected species from the site. Given that the strategy will have a bearing on various aspects of the scheme design I have cross referenced it within other conditions.
35. Condition (4) secures a programme of further archaeological work, the need for which is justified by the level of interest demonstrated by previous investigation of the site. This is again required pre-commencement given that construction works may destroy the archaeological deposits.
36. Condition (5) secures provision of a Construction Management Plan, which is imposed in the interests of highway safety and the amenity of occupants of adjacent dwellings. Again, the condition is required to be pre-commencement given that adverse effects may arise from the outset of works.
37. Condition (6) secures implementation of measures to protect retained trees and hedges.

38. Condition (7), which combines a number of suggested conditions, secures a scheme of hard and soft landscaping. This will assist in the provision of a high standard of amenity, and environmental enhancement.
39. Condition (8) secures details of the materials to be used in the construction of the dwellings in the interests of securing a high standard of design.
40. Condition (9) requires details of lighting in the interests of amenity and biodiversity.
41. Condition (10), which again combines a number of suggested conditions, secures the provision of a detailed scheme of drainage. This is necessary given the preliminary nature of the submitted material, in the interests of ensuring proper drainage of the site.
42. Condition (11), which once again combines a number of suggested conditions, requires the implementation of off-site highways works which are necessary to enable access to the site and in order to connect it to the rest of the village. I have not imposed a requirement to maintain the visibility splays given that these partly fall outside the site.
43. Condition (12) secures provision of cycle and refuse stores in the interests of amenity, sustainable travel, and health.
44. Condition (13) secures provision of parking and turning spaces, which will help to ensure that the development caters for the parking demand that it will generate.
45. Condition (14) is imposed on a precautionary basis to address the potential for unknown contamination in the interests of health and safety.
46. I have not imposed a suggested condition requiring provision of a travel welcome pack outlining sustainable travel options. This is because scope to travel by foot and cycle around the village is self-evident, and, as outlined above, the village is not currently served by public transport. The travel pack would therefore serve no useful purpose.

Conclusion

47. For the reasons set out above I conclude that the appeal should be allowed.

Benjamin Webb

INSPECTOR

Schedule of Conditions

- 1) The development hereby permitted shall begin no later than 3 years from the date of this decision.
- 2) Unless modified in compliance with the conditions below the development hereby permitted shall be carried out in accordance with the following approved plans: 6499-P-100E; 6499-P-101A; 6499-P-200; 6499-P-201; 6499-P-202; 6499-P-203; 6499-P-204; 6499-P-205; 6499-P-206;

6499-P-207; 6499-P-208; 6499-P-209; 6499-P-715A; 6499-P-716;
6499-P-717A; 6499-P-718A; 6499-P-719; 6499-P-720; 6499-P-721;
6499-P-722; 6499-P-723; 6499-P-724A; 6499-P-725; 6499-P-726;
6499-P-727; 6499-P-728A; 6499-P-729.

- 3) The development hereby permitted shall not commence until an Ecological Mitigation and Enhancement Strategy has been submitted to and approved in writing by the Local Planning Authority. This strategy shall be informed by the recommendations of the submitted Preliminary Ecological Appraisal Report BG-21.262 dated October 2021, with revisions as required. The development shall then be carried out in accordance with the approved strategy.
- 4) The development hereby permitted shall not commence until a Written Scheme of Investigation (WSI) which sets out a timetabled programme of further archaeological excavation of the site, including arrangements for post-excavation analysis, publication and archiving, has been submitted to and approved in writing by the Local Planning Authority. The WSI shall then be implemented as approved.
- 5) The development hereby permitted shall not commence until a Construction Management Plan shall be submitted to and approved in writing by the Local Planning Authority. This shall include the following details:
 - a) measures to ensure that vehicles leaving the site do not deposit mud or other detritus on the public highway;
 - b) the locations within the site in which parking, material storage and welfare facilities will be positioned;
 - c) a schedule of days and hours when works will be undertaken on site, and servicing and deliveries will occur;
 - d) measures to be taken to safeguard soil quality on site throughout the construction process;
 - e) a highway condition survey, and timescale for re-inspections.The Construction Management Plan shall then be implemented as approved.
- 6) The development hereby permitted shall be carried out in accordance with the recommendations set out within part 4, and the guidelines, including Tree Protection Plan set out within Appendices 2 and 3 of the Arboricultural Impact Assessment Survey and Report Ref. BG21.262.1 Rev 1.
- 7) Prior to commencement of construction above ground level of the development hereby permitted, a detailed landscaping scheme which shall be informed by the submitted Landscape Concept Plan, and shall demonstrate the incorporation of measures recommended within the Ecological Mitigation and Enhancement Strategy approved under Condition (3), shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall cover/include:
 - a) the identification of any existing features to be retained, and any measures for their enhancement;
 - b) a detailed scheme of new planting;
 - c) hard and soft surfacing materials;
 - d) boundary treatments;
 - e) a timetable for implementation; and
 - f) a management plan relating to all areas of communal landscaping which sets out a maintenance schedule, and identifies the parties responsible for its ongoing implementation.

The approved landscaping scheme shall then be implemented in accordance with the approved timetable, and, where applicable, shall thereafter be managed in accordance with the approved management plan. Any trees or plants which die, are removed, or become seriously damaged, or diseased within a period of 5 years following planting shall be replaced in the next planting season with others of a similar size and species.

- 8) Prior to commencement of construction above slab level of the dwellings hereby permitted, a specification of the materials to be used in the construction of all external building surfaces, together with details of the location/design of any in-built features to support nesting/roosting by bats and birds as may be required by the Ecological Mitigation and Enhancement Strategy approved under Condition (3), shall be submitted to and approved in writing by the Local Planning Authority. The development shall then be implemented in accordance with the approved specification.
- 9) No external lighting shall be installed in relation to the development hereby permitted until a lighting scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme shall provide technical details and identify the locations in which lighting will be installed, and shall specify the way in which it will be operated, taking into account sensitivity required in relation to bats, and the occupants of nearby dwellings. The lighting shall then be installed, and shall thereafter operated in accordance with the approved scheme.
- 10) Notwithstanding the submitted details, the dwellings hereby permitted shall not be occupied until surface water drainage works have been implemented in accordance with a scheme that has first been submitted to and approved in writing by the Local Planning Authority. The submitted scheme shall include:
 - a) A specification and design drawings showing the way in which surface water will be drained;
 - b) an exceedance flow routing plan for flows above the 1 in 100+40% event; and
 - c) a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker or any other arrangements to secure the operation of the scheme throughout its lifetime.
- 11) The development hereby permitted shall not be occupied until the offsite highways works shown on plan P_ENG_020 Rev C have been completed.
- 12) Prior to the first occupation of the dwellings hereby permitted cycle and refuse stores shall be provided and made available for the storage of cycles and refuse in accordance with details which have first been submitted to and approved in writing by the Local Planning Authority. The cycle and refuse stores shall thereafter be retained and kept available for such uses at all times.
- 13) Prior to the first occupation of the dwellings hereby permitted, the related parking and turning spaces shown on the approved plans shall be fully constructed and made available for the parking and turning of vehicles. The parking and turning spaces shall thereafter be retained and kept available for such uses at all times.
- 14) Any unexpected contamination that is found during the implementation of the development hereby permitted shall be reported immediately to the Local Planning Authority. Development on that part of the site affected shall be

suspended and a risk assessment carried out by a competent person in accordance with relevant British Standards and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR11) (or equivalent British Standards and Model Procedures if replaced) and submitted to and approved in writing by the Local Planning Authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the Local Planning Authority. These approved schemes shall be carried out before the development (or relevant phase of development) is resumed or continued.

Richborough Estates

APPEARANCES

For the Appellant

Matthew Hunt	Walker Pritchard Housing
Tony Kernon	Kernon Countryside Consultants Ltd
Hashi Mohamed	Counsel for the appellant, No5 Chambers
Neil Pearce	Avon Planning Services Ltd

For the Council

Denise Duggan	Senior Planning Officer
Howard Leithead	Counsel for the LPA, No5 Chambers
Leanne Pogson	Principal Planning Officer

Interested parties

Emily Dickenson	Local resident
Michael Neilan	Local resident
Ian Southcott	Parish Council
Emma Stroud	Local resident

Documents Presented at the Hearing

Appeal Decision APP/H1840/W/20/3248917
Appeal Decision APP/H1840/W/21/3276845
Planning Committee Report 20/00585/FUL.