

Appeal Decision

Hearing held on 8 August 2023

Site visit made on 8 August 2023

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 September 2023

Appeal Ref: APP/H1840/W/23/3320041

Land at Evelench Lane, Tibberton WR9 7NQ

- 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 Mr Michael Gooch on behalf of Mactaggart and Mickel Homes England Ltd and John Alison Land and Research Ltd against Wychavon District Council.
 - The application Ref W/22/01565/OUT, is dated 8 July 2022.
 - The development proposed is an outline planning application with all matters reserved except for access for a development of up to 100 dwellings (Use Class C3), green infrastructure, car parking, drainage works, and other associated infrastructure works.
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Decision

1. The appeal is dismissed and outline planning permission with all matters reserved except for access for a development of up to 100 dwellings (Use Class C3), green infrastructure, car parking, drainage works, and other associated infrastructure works is refused.

Preliminary Matters

2. The planning application submitted is in outline form with all matters reserved for future consideration, except for access. I have had regard to the illustrative masterplan insofar as it shows how the proposed development could potentially be delivered on the appeal site. The planning application was not determined by the Council, but in considering this appeal I have had regard to their view that planning permission ought to be refused and the four putative reasons for refusal that it has identified within its Statement of Case.
3. In relation to the second of those, the Statement of Common Ground Addendum confirms the main party's agreement that the proposal will not give rise to concerns with trip generation, trip distribution, a traffic impact on the Grade II listed canal bridge or capacity issues at the Plough Road/proposed site access junction. Further, a Road Safety Audit (RSA) has been carried out. The RSA recommends several changes to the site access plan. Although a scheme should not evolve during the appeal process, the changes on plan Ref: 3253.10F are minor and do not materially alter the development proposed or the proposed means of access from Plough Road. Thus, my consideration of the appeal scheme based on this revised plan would not cause prejudice to the Council or interested parties. The Council agrees with the appellant that, subject to this plan and the imposition of planning conditions and planning obligations, the proposed development would provide a safe and suitable access for all users. I concur with that assessment.
4. A signed and complete s106 planning agreement (s106 agreement) was submitted by the appellant shortly after the Hearing closed. I will consider the

planning obligations and the s106 agreement later in my decision.

Main Issues

5. The main issues in this case are: a) whether the proposed development accords with the spatial strategy of the development plan, having regard to the size of Tibberton, local character, location and the availability of infrastructure; and b) whether the proposal would make adequate provision for affordable housing, education, public open space and children's play facilities, highway improvement works and transport, healthcare, biodiversity and protected species, and access to, and the resurfacing of the canal towpath.

Reasons

Spatial strategy for development

6. Policy SWDP 2 of the South Worcestershire Development Plan (SWDP) outlines the Development Strategy for South Worcestershire. SWDP Policy 3 outlines that housing provision will be made for about 28,400 dwellings (net) during the plan period. This overall housing provision is then broken down into sub areas. The area subtotal for Wychavon is 10,600 dwellings, split as 7,300 market homes and 3,300 affordable homes.
7. The appeal site lies next to, but outside of the development boundary for Tibberton, a Category 3 Village which provides a limited range of facilities and services. Development beyond the development boundary is within the open countryside and will be strictly controlled and limited to dwellings for specified purposes listed in other development plan policies. The appeal scheme is not a proposal that falls within one of those purposes. On that basis, conflict arises with the Development Strategy set by the SWDP Policy 2 C.
8. Nevertheless, Policy SWDP 2 F also outlines that development proposals should be of an appropriate scale and type with regard to the size of the settlement, local landscape character, location and the availability of infrastructure. While only access details are before me, SWDP Policies 21 and 25 are relevant to the acceptability of the development in principle having regard to local landscape character. Specifically, part B ii and v of SWDP Policy 21 seek proposals to complement the character of an area and the distinct identity and character of settlements. Part A of SWDP Policy 21 is also part of the assessment of character in that it requires all development to integrate effectively with its surroundings in terms of form and function and reinforce local distinctiveness.
9. Tibberton is located to the east of the city of Worcester and to the south of Droitwich Spa. The village comprises around 300 houses and has a population of around 600 people based on the 2011 census. Facilities in Tibberton include a first school, a village hall and two public houses. Two unmarked bus stops, located next to and opposite Speed the Plough public house, offer a connection to and from Worcester on Monday to Saturday with two morning services and three return services in the afternoon/early evening. There is no public transport to Droitwich Spa. Both Worcester and Droitwich Spa offer a full range of services and facilities for people. Existing residents in Tibberton use these to cater for their everyday needs.
10. The site is an open, undeveloped field used intermittently for grazing of livestock. Several public rights of way (PRoW) extend across the site. Dwellings are to the west of the site on Plough Lane, together with the Speed the Plough public house. Arable fields are to the north and east. The Birmingham and Gloucester Railway line is elevated and to the east of the site. The Birmingham

and Worcester Canal is to the north. A Grade II listed bridge crosses over the canal to the northwest of the site. The site is well contained by boundary hedgerows and trees of varying quality. A Tree Preservation Order covers the whole site and every tree within it.

11. The site is located to the east of the village envelope which is predominately characterised by historic or older linear development along either or both sides of Plough Lane, Foredraught Lane and Church Lane. More recently, housing was added on Hawthorn Rise to the west of Plough Lane. This has, to some extent, infilled the space between Plough Lane and Foredraught Lane and led to a shift in the pattern of development, but it is predominately linear in form. Despite the more recent additions, the appeal site provides an immediate visual link to the open countryside from within the village envelope. The multiple PRow across the site and the use of these by the local population mean that the site offers a functional link to the wider countryside for onward recreational journeys using the wider PRow network.
12. The proposed residential dwellings would respond to the type of development found in Tibberton. The site's location next to the development boundary could be viewed as a logical extension to Tibberton, but the size of the appeal site is considerable. While the site could accommodate the development proposed, the quantity of it is likely to mean that development would be spread across a large portion of the site. Although any potential layout could include good-sized areas of greenspace, the PRow's and landscaping to strengthen existing vegetation and soften the proposed dwellings, the scale of development would result in the significant expansion of Tibberton to the east of Plough Lane.
13. The SWDP does not specify a numerical value or outline a guide to help inform the consideration of scale in terms of the size of Tibberton. Although looking at a numeric or percentage increase may be too simple, it is a key factor in this case. This is because when the Development Strategy and the role that Category 3 Villages within the settlement hierarchy are considered, the proposal would result in a substantial uplift in the number of homes and people in Tibberton. The scale of development proposed would be disproportionate and out of context with the existing settlement's size.
14. Of course, the proposal would help deliver housing, but Tibberton has already accepted the 21 new homes identified in SWDP Policy 59. Further housing development can potentially come forward through that policy, but the appeal scheme does not meet any of the criteria for doing so. There is also no substantive assessment before me demonstrating that the proposal as a whole would meet an identified local need.
15. The scale of the proposal must also be looked with regards to the availability of infrastructure. There are limited facilities and services within Tibberton for the current population, yet alone for the number of future residents that would result from the appeal proposal. People would need to travel to be able to satisfy their day to day needs, and given the limited bus service, most journeys would be by private vehicle. Future residents who are keen and able may wish to make use of the canal towpath as an off-road route to reach employment opportunities on the edge of Worcester by foot or bicycle. However, those journeys would be less appealing during the hours of darkness and inclement weather, so it is a route predominantly for leisure purposes. I also consider

that it would not change the dependency future residents would have on their own vehicles to access everyday facilities and services, save for children accessing education given the provision within the s106 agreement around transport to and from several places of education which would mitigate the development's impact.

16. Even recognising that there are generally less sustainable transport solutions in rural areas, or at the least that they can vary, the infrastructure to support the scale and type of development proposed does not exist in Tibberton, and the appeal site is not well located for future residents to access the infrastructure needed to support their day to day needs. The proposal would not integrate effectively with its surroundings in terms of function.
17. I have had regard to the Landscape and Visual Appraisal. Inevitably, developing the site would cause a change in the land's character from an open, pastoral, low-lying field that adjoins an irregular field pattern. Change is not, however, synonymous with harm, but the proposal would cause a permanent change to the character of the land, nonetheless. Yet, it would not be an infill development as the appellant suggested at the Hearing. It would, instead, be a sizeable extension to the village to the north and east, even if a large part of the site is set aside for open space, walking trails, wildflower meadow and allotments, as they are likely to have a managed appearance compared to the current open field.
18. Those elements, if located on the edges of the appeal site away from the existing development boundary, could create a suitable transitional edge to the development and the landscape character around the edge of Tibberton. But to achieve that, the dwellings would likely need to be located together and closer to the linear development on the eastern side of Plough Lane. Given the scale of the development proposed, I am not of the view that the proposal could respond to that form of development, the predominate characteristic in Tibberton. Although the site is well contained by existing boundaries and further landscaping could be introduced, the proposal would materially harm local character. This harm would be evident from the various PRoW across the site and the nearby area, but also from Plough Lane.
19. For these reasons, the proposal would not be of an appropriate scale with regard to the size of the settlement, local landscape character, location and the availability of infrastructure.
20. However, taking a step back, the SWDP was adopted in 2016 and it has not been the subject of a review. It is now more than five years old, and the Council accepts that it cannot currently demonstrate the minimum five-year supply of deliverable housing sites required through paragraph 74 of the National Planning Policy Framework (the Framework). It says that it can demonstrate a 3.81 year supply, whereas the appellant says that the deliverable supply is 3.15 years. I agree with the appellant that the difference in the two figures is not determinative in this case as the shortfall is significant regardless. But I shall proceed based on the worst-case scenario, which is that of the appellant's figure, but noting that there are no decision-making consequences as a result of the latest Housing Delivery Test (HDT).
21. The Council is now preparing the South Worcestershire Development Plan

Review (emerging plan) which will update the SWDP and look at its vision, objectives, spatial strategy and policies. The emerging plan will involve site allocations and policies to provide a framework for development up to 2041. The precise timeline for the adoption of the emerging plan is unclear, but its submission at the end of the summer seems to be optimistic, given the emerging plan is to go before full council before it is submitted for examination. Regardless, there are unresolved objections to parts of the plan, including site allocations in Tibberton. Therefore, the emerging plan is in its early stages and little weight can be afforded to it.

22. So, while it may be proposed in the emerging plan to upgrade Tibberton in the settlement hierarchy, that strategy and the evidence that underpins it has yet to be tested at examination. A similar change to the settlement hierarchy is indicated for Crowle, but that is a matter for the local plan process to consider.
23. Part of the appeal site is proposed to be allocated, but the development proposed in the scheme before me is of a very different scale to that indicated in the emerging plan (up to 25 dwellings). This has also yet to be tested at examination, so it carries little weight.
24. The Council say that the current shortfall below the minimum supply of deliverable housing sites is only temporary, but it is supported by permissions granted for housing development outside of the settlement boundaries in the open countryside, contrary to Policy SWDP 2. The exact circumstances in which these decisions were taken are not wholly clear, but they have helped boost the supply of housing and the Council relies upon them as part of its supply of housing sites. The Council also explained at the Hearing that greenfield sites will need to be relied upon to meet the District's housing need. Without those sites, even on the Council's own case, the shortfall would be greater still. As sites in the countryside are being relied upon to deliver the housing needed in the District, it leads me to consider that Policy SWDP 2 is out-of-date.
25. The appellant points to two recent resolutions by the Planning Committee to approve schemes for 32 and 62 dwellings on sites outside of the development boundary for Crowle, a nearby village to Tibberton. However, both resolutions are subject to s106 agreements being finalised, and as such, decision notices have yet to be issued. Hence, they carry little weight and both resolutions were reached having carried out the tilted balance, noting each scheme's conflict with SWDP Policy 2. In any event, for the reasons explained, the tilted balance is to be applied in this case.
26. I conclude, in respect of this issue, that the proposed development would not accord with the Development Strategy of the development plan, having regard to the size of Tibberton, local character, location and the availability of infrastructure. The material harm arising from the conflict with Policies SWDP 2, 21 and 25 would be substantial. SWDP Policy 2 seeks, among other things, to deliver residential development in accordance with the Development Strategy and Settlement Hierarchy, except for specific exceptions. Proposals should also be of an appropriate scale, having regard to the size of the settlement, local landscape character (SWLP Policy 25), location and the availability of infrastructure. Policy SWDP 21 seeks development to integrate effectively with its surroundings, in terms of form and function, and reinforce local distinctiveness, and this policy is consistent with the Framework.

Planning contributions

27. The completed s106 agreement would secure financial contributions towards

the impacts of the development on local infrastructure, including in respect of education, healthcare, off-site built sports facilities, off-site formal sports facilities, highway improvement works and school transport. The s106 agreement also includes mechanisms to secure the delivery of affordable housing, biodiversity net gain, a curlew mitigation strategy, and on-site public open space and children's play facilities and its subsequent management and maintenance. The contributions that would be secured through the s106 agreement would meet the statutory tests set out in the Framework and in Regulation 122 of the CIL Regulations. As such, they are material considerations in this appeal.

Other Matters

Heritage and archaeology

28. Although not a refusal for refusal, I have a statutory duty to consider the effect on heritage assets. The Grade II listed canal bridge to the north-west of the site on Plough Lane provides a well-used route in and out of the village. The bridge's historical significance derives from its association with the Worcester and Birmingham Canal and its onward links to the Birmingham Canal Navigations and the River Severn. The bridge also lies within the Worcester and Birmingham Canal Conservation Area ("the CA") which extends along the length and width of the canal in the vicinity of the appeal site.
29. The canal was used to supply coal from the Black Country to the south-west Midlands. The significance of the CA is therefore historical, and due to the route and accessibility of it by boat, on foot or bicycle, it has a varied long setting relating to the canal itself, but also the historical, social and industrial evolution of the towns and villages along its route.
30. The appeal site is not part of the setting of the canal bridge or the CA. However, the proposed development would bring about journeys by different modes of transport over the bridge or under it and along the canal towpath.
31. The bridge has a 3.5 tonne weight limit and there are no other restrictions on its use. In fact, the bridge functions as a road connecting the village to the north. A condition could ensure that any construction traffic does not use the bridge to or from the site, but some extra vehicle movements would occur. However, there would not be a material increase based on the assessments before me. Vehicles also travel across the bridge at low speeds due to the width of the bridge and the bend in the road to the north of it. Changes have also been made in recent years to the road layout to the north of the bridge to help drivers avoid striking the bridge when they approach it from the north. There would be no change to the route of the towpath below or how people principally enjoy the canal, and the proposed accessibility improvements would mean future residents could continue to make use of the canal towpath.
32. I am therefore of the view that the proposal would not alter the bridge's relationship, function or people's experience of it. Nor would the proposal affect the significance or setting of the CA. Hence, the proposal would have a neutral effect on the significance of the listed canal bridge and the CA.
33. Having regard to the evidence, I agree with the main parties that, subject to a suitably worded planning condition to secure a programme of archaeological investigation, the proposals would conserve all archaeological remains of all periods in accordance with Policy SWDP 6.

Best and most versatile land

34. The Agricultural Land Survey confirms that approximately 3.35 hectares or

42% of the appeal site comprises of Grade 3a land. This grade of land is one of the top three grades of Best and Most Versatile (BMV) land for versatility and suitability for growing crops. The proposal would result in the loss of this Grade 3a land, and the appellant has not shown that the proposal could not be located on non-BMV land. Therefore, given the size of the loss, the proposal would conflict with Policy SWDP 13 Part H. Criterion ii of Policy SWDP 13 considers the benefits of development like Framework paragraph 174 b), but it requires both criterion to be met.

35. Despite the policy conflict, the main parties agree Policy SWDP 13 is inconsistent with the Framework as it reflects an earlier version of the Framework that sought to minimise the loss of BMV to development. The current version of the Framework is instead focussed on recognising the economic and other benefits of BMV land. I therefore agree with the main party's assessment about the policy. However, moderate harm arises from the conflict with this policy due to the loss of BMV land, despite the makeup of the District, without a detailed assessment of whether the proposed development could be located elsewhere.

Flood risk and drainage

36. The appeal site is predominantly within Flood Zone 1. The north eastern part of the site is within an area of higher risk from surface water flooding, but the site is of sufficient size to be able to accommodate the amount of development proposed without leading to flood risk issues. Detailed designs could come forward as part of any reserved matters submission.
37. Although the issue of foul drainage was not a putative reason for refusal raised by the Council, Severn Trent Water have confirmed, after carrying out modelling, that the proposed development will not have an adverse impact on the existing foul sewage network, and that there is sufficient capacity within that network to accommodate the proposed development. So, although, interested parties have raised concerns about drainage, I have no reason to disagree with the view of Severn Trent Water on this issue.

Pollution

38. Concerns about noise, light and air pollution can be overcome by planning conditions to ensure residents' living conditions are not adversely affected both during any construction and after it. The trips that would be generated as a result of the proposal do not require mitigation measures.

Planning Balance

The Development Plan

39. I have found substantial harm in respect of the proposal's conflict with Policies SWDP 2, 21 and 25. There would also be moderate harm from the proposal's conflict with Policy SWDP 13 in relation to BMV although that policy is inconsistent with the provisions of the Framework.
40. There would be no conflict with Policies SWDP 6 and 24 due to my findings about the designated heritage assets and archaeology. The s106 agreement secures contributions required by Policies SWDP 5, 15, 22 and 39, together with Framework paragraphs 95, 96, 110, and 179 to 182. The obligations in respect of affordable homes, highway improvement works, and biodiversity net gain would provide the local community with benefits that weigh in favour of the proposed development. The other obligations would mitigate the appeal scheme's effect, and thus, they do not weigh in favour or against the proposal.

41. Assessing the appeal scheme against the development plan is the starting point for decision-making. Due to the tilted balance found in Policy SWDP 1, I will consider whether the proposal would be contrary to the development plan when taken as a whole later in my decision, but given the harm that I found in respect of it, and the provisions of the Framework, I will consider whether there are material considerations that could indicate that a decision should be made otherwise than in accordance with the development plan.

The benefits of the appeal scheme

42. The affordable housing contribution would exceed the figure identified locally, and the proposal would help contribute to the wider need for affordable homes in the District. The contribution is policy compliant, and I consider that this matter carries considerable weight in favour of the appeal scheme given the need for affordable housing across the District.
43. The provision of market housing would help to significantly boost the supply of housing in the District against the backdrop of a supply figure that falls below the minimum threshold of five years set by the Framework. The proposal would also assist in terms of housing mix, by helping widen housing choice. The proposed units could be delivered in the short term, and planning conditions could ensure this. Thus, I attach considerable weight in favour of the proposal to the provision of market housing.
44. A large proportion of the appeal site would provide green infrastructure. This would be over and above the 40% required by Policy SWDP 5, and that provision could include amenity greenspace and allotment space above the standard sought by Policy SWDP 39, helping address the shortfall identified in the area. Furthermore, the proposal would see an increase in children's play space, again to address a need. The facilities would chiefly be used by future residents, but given that there would be an over-provision, they carry limited to moderate positive weight. The green infrastructure would also be used by existing residents, but I only attach limited positive weight to this given the existing recreational use of the land and the location of many existing residents in relation to the proposed green infrastructure.
45. Economically, the proposal would result in expenditure on the development and its construction and the creation of new jobs. New residents would also spend money in the local economy, though any benefit would principally be felt in Worcester and Droitwich Spa, not Tibberton due to the location of facilities and services. These would provide a mix of time-limited and permanent economic benefits. I consider that they jointly carry moderate weight given the scale of the proposed development.
46. The highway improvement works would improve accessibility to the canal towpath and the safety of road users along Plough Road and at its junction with Evelench Lane. As these improvements would benefit the existing population also, they carry limited positive weight rather than just mitigating the effects of the proposal. The community car park would allow for school pick up and drop offs away from Plough Lane, but the new access would affect the amount of parking already available at the public house, which seems to be used for school pick ups and drop offs and by persons using the PRow network. As such, the benefit of the community car park would be limited in my opinion.
47. The obligation to secure biodiversity net gain carries limited positive weight in my opinion, because those net gains would enhance the natural environment. The contributions towards local infrastructure are necessary to offset the

impacts of the development. The same applies to the curlew mitigation strategy. They therefore carry neutral weight.

Conclusion on the Planning Balance

48. The most important policies for determining this appeal are SWDP 2, 13, 21 and 25. When taken together, for the reasons outlined in my first main issue, they are deemed out-of-date. There is also no conflict insofar as the various policies relating to the obligations found in the s106 agreement.
49. Given this and as a consequence of my findings in respect of the heritage assets, the tilted balance as set out in Framework paragraph 11d)ii) is to be applied. I have set out the weight that the scheme's social, economic, and environmental benefits carry in favour of the appeal scheme.
50. The wording of Policy SWDP 1 D reflects an earlier version of the Framework. Despite the difference in the wording, notably the phrases 'relevant policies' and 'policies which are most important', the policy is consistent with the thrust and consequences for decision making. The most important policies in this case are also the relevant policies in the context of Policy SWDP 1. The outcome is that my assessment remains to consider the benefits of the appeal scheme, but also its harm.
51. Weighing the two up is not a mathematical outcome; it is an overall judgement. Despite the proposal's benefits, many of them could theoretically be delivered through a similar scheme in another location where better infrastructure is available to support it and where it does not harm the size or character of the settlement. There is also a need to ensure, notwithstanding the housing land supply position, that housing development is permitted in the right place and of the right scale for that location. It is not a case of development at all costs.
52. The proposal would cause permanent and irreversible change due to its scale, location in the open countryside next to Tibberton, the character of the village and because there is a lack of sufficient infrastructure to support the scale of development proposed. I am mindful that sites in the open countryside have been granted planning permission and that they may well be needed to address the District's housing supply position. When this is balanced against the harm that the proposal would cause, it leads me to consider that significant weight should be attached to the conflict with the development plan policies relating to the Development Strategy. There would also be moderate weight to the degree of conflict caused with SWDP 13 in spite of its inconsistency.
53. In this case, due to the harm that the proposal would cause, the adverse impacts of granting planning permission would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. The proposal would, as a result conflict with Policy SWDP 1 and would be contrary to the development plan when taken as a whole.

Overall Conclusion

54. There are therefore no material considerations to indicate that this decision should be made otherwise than in accordance with the development plan. Accordingly, for the reasons given above, I conclude that the appeal should be dismissed, and planning permission refused.

Andrew McGlone

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Stephen Morgan
Russell Smith
Peter Widdrington
Hilary Vaughan
Stuart Nelmes

Counsel
McLoughlin Planning
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Peter Evans Partnerships
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FOR THE LOCAL PLANNING AUTHORITY:

Nick Atkinson

Dawn Evans
Rachel Sandy

Interim Team Leader – Development
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Worcestershire County Council

INTERESTED PARTIES:

Councillor Margaret Rowley, Wychavon District Council
Councillor Trevor Knight, Tibberton Parish Council
Christopher Mowbray
Joanne Heaton

DOCUMENTS

- 1 – Updated Planning Obligations CIL Compliance Statement
- 2 – Worcestershire County Council S106 Monitoring Fees