



Appeal Decision

Hearing held on 21 November 2023

Site visit made on 22 November 2023

by Andrew Smith BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7th December 2023

Appeal Ref: APP/J1860/W/23/3326243

Land at (OS 7474 6805) Apostles Oak, Abberley

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant outline planning permission.
 - The appeal is made by Mr Jeavons-Fellows on behalf of C50 Homes Ltd against the decision of Malvern Hills District Council.
 - The application Ref M/22/00321/OUT, dated 24 February 2022, was refused by notice dated 29 June 2023.
 - The development proposed is outline application (all matters reserved except access) for the construction of up to 14 entry-level affordable dwellings.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Jeavons-Fellows on behalf of C50 Homes Ltd against Malvern Hills District Council. That application is the subject of a separate Decision.

Preliminary Matters

3. The appeal proposal is for outline planning permission with all detailed matters except for access reserved for future approval. Whilst not formally part of the scheme, I have treated any details submitted with the appeal application relating to matters of appearance, landscaping, layout and scale as a guide to how the site might be developed.
4. It is apparent that a Review of the South Worcestershire Development Plan was submitted for examination in September 2023. However, examination hearings have yet to take place such that the Review's emerging policies, which may well be subject to future amendments, currently attract limited weight. I shall consider the appeal on this basis.
5. A Unilateral Undertaking pursuant to Section 106 of the Act (the legal agreement) is before me. This is dated 27 November 2023 and is signed by the appellant and relevant landowners. The legal agreement contains various provisions related to affordable housing, highway works, Green Infrastructure, a National Health Service contribution, and monitoring fees. I shall return to the legal agreement later.

Main Issue

6. The effect of the proposal upon the character and appearance of the area, having regard to the scheme's landscape and visual effects.

Reasons

7. The site is positioned to the northern side of the part of Abberley that is known as Abberley Common, outside but adjacent to the adopted development boundary for this settlement. It is comprised of part of a large arable field that forms part of a network of adjoining parcels of agricultural/rural land. The site features a hedgerow to its western boundary, which runs alongside the B4202 (Clows Top Road). Notwithstanding its inherent rural influences, the site sits in proximity to various instances of development. Indeed, the neighbouring plot of land to the south, which is bound by post and rail fencing, contains Abberley Village Hall and its associated car park. Abberley Primary School is situated opposite the Village Hall to the south, whilst recent housing development is in place to the western side of Clows Top Road opposite the appeal site.
8. The site is located within the Timbered Plateau Farmlands Landscape Type as described within the Worcestershire County Council Landscape Character Assessment (2012). The key characteristics of which include upstanding plateau of rolling topography dissected by broad valleys, an ancient wooded character, mixed hedges with scattered hedgerow oaks, and a mixed farming land use. Notwithstanding a lack of hedgerow oaks, the absence of upstanding plateau, and the adjacent village-edge influences that avail, the appeal site exhibits a landscape character that is broadly reflective of the typical characteristics of the Timbered Plateau Farmlands Landscape Type. For example, its gently sloping topography is representative of the valley-like landform that it comprises a part of, and its agricultural land use befitting of an open countryside location is obviously apparent.
9. Having carefully considered the appraisal of baseline conditions contained within the submitted Landscape and Visual Appraisal and listened to the submissions of the respective parties, I find that the site can be fairly considered to have a medium landscape value. Moreover, notwithstanding the undoubted contribution the site makes to the rural setting of Abberley Common, it does not display out-of-the-ordinary scenic qualities and can be experienced in the immediate context of various built influences.
10. As regards available views, I accept that the undulating nature of the land that surrounds the site's location as well as the mature landscape fabric (including established hedgerows) that defines much of the open countryside nearby are factors that restrict and contain the visual envelope of the site. It is also the case that existing built form plays a role in hindering views from locations within Abberley Common. That said, the open nature of the majority of the site's boundaries promotes the availability of some clear views. This includes from the grounds of the Village Hall to the south, upon approach from Abberley Village to the east, and from the public right of way network in locations to the approximate east and north.
11. Key Views are designated and protected by Policy ABY6 of the Abberley Neighbourhood Development Plan (made July 2021) (the ANDP). It is set out in the supporting text to this policy that the undulating and elevated topography of much of the Neighbourhood Area affords many striking views

across the landscape, and that proposals which would substantially harm designated Key Views, by blocking or materially intruding into them, should be avoided. The scheme would influence three Key Views, one at distance looking south from Bank Lane (KV1), one looking west upon the road between Abberley Village and Abberley Common (KV4), and one looking northwest from the rear of the Village Hall (KV5).

12. From publicly accessible vantage points to the north, including KV1 and footpath locations akin to Viewpoint 8 in the appellant's submitted Landscape and Visual Appraisal, the urbanising influence of new development would be somewhat tempered and curtailed by a backdrop of built and edge-of village influences. It is also relevant that various iterations¹ of the Proposed Masterplan, as well as a preliminary Landscape and Mitigation Strategy, demonstrate the site to be of sufficient size to accommodate 14 dwellings alongside a meaningful expanse of Green Infrastructure (and associated planting) focussed along the northern edge of the site. To my mind, it has been satisfactorily demonstrated that, upon maturation of a well-maintained future landscaping strategy, no more than moderate visual effects would be realistically experienceable from northern vantage points.
13. As regards views from available vantage points to the approximate east, including KV4 and locations along the public footpath that runs a north-south axis and crosses the highway approach from Abberley Village to Abberley Common, it is again the case that existing views are influenced, to at least some degree, by the presence of existing buildings. This includes the Village Hall and existing housing development to the opposite side of Clows Top Road. It is also the case that development of especially significant depth when taken from the southern frontage of the site is shown indicatively to be avoided. Thus, whilst 14 dwellings would inevitably have an adverse encroaching influence, its visual effects would be anticipated to be relatively contained. Moreover, I am content that, subject to the successful future implementation and maintenance of surrounding Green Infrastructure/soft landscaping, a significant detrimental impact upon the key features of KV4 could be avoided.
14. However, with respect to KV5 and views from the rear of the Village Hall I am unable to come to a similar finding. The Village Hall, I note, is a well-frequented facility served by various large north-facing openings that sit before an external patio of meaningful expanse that could be fairly anticipated to be in regular use during periods of warm and dry weather.
15. The depiction of KV5 on the latest iterations of the Proposed Masterplan does not mirror the precise position or direction of KV5 as illustrated upon Plan 5 within the ANDP and does not reflect experiences on the ground. Moreover, as was apparent upon inspection, the intrinsic character and scenic beauty of the countryside is best appreciated at a direction more akin to north-north-west (consistent with the direction of the corresponding arrow on Plan 5 of the ANDP) where, from the rear of the Village Hall, a rolling patchwork of unblemished agricultural fields interlaced with belts/pockets of established woodland is appreciable into the far distance.
16. The arrow depicting KV5 on Plan 5 is, I note, positioned to overlay a portion of the Village Hall's car park. I acknowledge that, consistent with the written description of KV5 contained within the ANDP, the greatest level of sensitivity

¹ Revisions L, M, M1

applies to views available from the rear of the Village Hall itself. Nevertheless, even though the car park would most commonly serve as a transient space for visitors arriving at or departing the facility, scenic views principally unfettered by insensitive influences (such as a prominent pylon that stands in the vicinity) are available from its westernmost parts. This is a factor relevant to my considerations.

17. In the context just explained, the westernmost proposed dwellings (most particularly Units 13 and 14) and associated access/driveway infrastructure as depicted on each submitted version of the indicative Proposed Masterplan (including Revision M1) would severely intrude into KV5 and unacceptably diminish the quality of available outward views across the open countryside. This is even though the proposal has been indicatively designed to constrain development away from the western quarter of the site. Unacceptable intrusion would apply even should a planning condition be imposed to limit the height of built development to six metres and a comprehensive scheme of soft landscaping be separately secured.
18. I have noted reference to the potential for a solid two-metre fence to be erected between the Village Hall and the appeal site under permitted development rights. However, there is no clear reason why a treatment of solid specification would be required to the perimeter of an arable field, and I see no real prospect of such an installation taking place. Even if such a prospect could be thought to exist, a two-metre fence would not have a comparable level of permanence to new housing and would not lead to a similar level of visual intrusion.
19. I acknowledge that the scheme is in outline form with all matters bar access reserved for future approval, which offers inherent flexibility. Indeed, the layout could evolve at detailed planning stage from that which is currently envisaged on an indicative basis. Nevertheless, the evidence before me, namely the Proposed Masterplan, including revision M1, has failed to provide evidence that a satisfactory scheme of up to 14 units is capable of being devised at reserved matters stage whilst not having a detrimental impact upon the key features of KV5.
20. Moreover, whilst a low-density development is proposed when calculated on a site-wide basis, a significant proportion of the site is understandably intended to function as Green Infrastructure serving to mitigate the effect of the proposed housing at this sensitive rural site. The Green Infrastructure provision that is anticipated could not be thought of as potentially suitable for accommodating housing. I note that, consistent with the constraints associated to bringing forward major development at this site, the delivery of a manageable area of Green Infrastructure is an approach embedded in the legal agreement.
21. I have read and listened to representations concerning the effect of introducing a new footpath to run along the eastern verge of Clow Tops Road and beside the Village Hall. Whilst such an installation would necessitate the removal of some existing planting, I am satisfied that measures could be put in place during construction to offer suitable assurances that established tree cover would remain. It is also the case that a new footpath in the location intended would be experienced on the ground as contained within the built limits of Abberley Common and would not appear as a wholly unexpected addition to

the streetscene. I thus have no undue concerns in a character and appearance sense with respect to this particular facet of the scheme.

22. However, for the above reasons, whilst I have found the site itself not to display out-of-the-ordinary scenic qualities or a high landscape value, the loss of agricultural land to housing development at this edge-of-settlement location would inevitably lead to adverse landscape and visual effects and to harm being caused to the character and appearance of the area. When factoring in my specific findings with respect to visual effects from KV5, I find the level of identified harm to be substantial.
23. The scheme conflicts with Policies SWDP21 and SWDP25 of the South Worcestershire Development Plan (February 2016) (the SWDP) and Policies ABY5 and ABY6 of the ANDP in so far as these policies require development to be appropriate to, and integrate with, the character of the landscape setting and not to have a detrimental impact on the key features of Key Views.

Other Matters

24. Tump House, a Grade II Listed building, is situated to the east of the site beyond intervening agricultural land. Its significance and special interest as a designated heritage asset is drawn, in-part, from its age, traditional materials, and relevance to the history and evolution of the rural area. Given the considerable degree of physical separation that would avail, I am content that the proposal would not lead to any material loss of heritage significance through development within Tump House's setting.
25. Policy ABY8 of the ANDP relates to Local Green Spaces and requires development within such spaces to be consistent with national policy for Green Belts. Whilst the Village Hall site is designated for its landscape, amenity and recreational value, the proposal relates to land outside of the Local Green Space classification. Thus, for the avoidance of doubt, Policy ABY8 is of limited relevance.
26. I have noted objections/concerns raised by interested parties with respect to matters including highway and pedestrian safety, drainage, school capacity, and the effect upon community facilities. However, as I have found the proposal to be unacceptable for other reasons, it is not necessary for me to explore such matters further here.

Planning Balance

27. It is a matter of common ground that the Council cannot currently demonstrate a five-year supply of deliverable housing sites. As such, the presumption in favour of sustainable development is engaged. For decision making this means 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's policies taken as a whole.
28. I have identified conflict with Policies SWDP21 and SWDP25 of the SWDP, and with Policies ABY5 and ABY6 of the ANDP. Each is consistent with the Framework in the sense that it seeks to recognise the intrinsic character and beauty of the countryside and to ensure that developments are sympathetic to local character, including the surrounding built environment and landscape setting. I also note that none of the aforementioned policies seek to provide blanket protection of the open countryside from development. Thus, even in

the context of a housing supply shortfall, I apportion significant weight to these identified policy conflicts and to the associated harm that would be caused to the character and appearance of the area having regard to the scheme's landscape and visual effects.

29. Turning to the scheme's benefits, it would deliver up to 14 additional dwellings in a District where merely a 3.7-year supply of deliverable housing sites is demonstrable and at a settlement suited to accommodating market and affordable housing needs. Moreover, 14 entry-level affordable homes are sought to be secured via the legal agreement, with the house types and tenure mix subject to future approval. Whilst the development plan is silent on the matter of entry-level affordable housing sites, the proposed units would be provided in full accordance with the requirements of paragraph 72 of the National Planning Policy Framework (the Framework) which, amongst other provisions, supports the development of entry-level exception sites unless the need for such homes is already being met within the authority's area.
30. It has been brought to my attention that the Council's 2021 Strategic Housing Market Assessment (SHMA) indicates a shortfall of 331 affordable homes per annum across the district. This is an annual need figure that has grown rapidly since it was calculated at 72 affordable units through the 2019 SHMA. As such, even though these calculated shortfalls are not specific to entry-level affordable housing per se, the scheme would logically make an important contribution towards satisfying an acute and growing need for entry-level affordable housing at District level. Indeed, notwithstanding other recent developments and the associated delivery of affordable housing stock at Abberley itself, the provision of 14 entry-level affordable units would promote the delivery of distinct social benefits attractive of significant weight. This is especially as the legal agreement ensures priority access would be given to qualifying residents with a local connection.
31. The legal agreement secures various other contributions and works. However, these are intended to mitigate the proposal's effects and, on this basis, do not typically attract positive weight in the planning balance. That said, the provision and maintenance of Green Infrastructure is secured via the legal agreement, and it has been put to me that the scheme would deliver publicly accessible open space. However, such open space would primarily be of benefit to future occupants of the scheme itself rather than the wider local community. There is also no evidence before me to clearly suggest that there is an identified local need for additional open space. I therefore afford this benefit limited weight. Furthermore, given the non-strategic scale of the site, any biodiversity benefits to be brought about by new planting would realistically be modest and attractive of somewhat limited weight in the planning balance.
32. The development would also create jobs during the construction phase and would, most particularly once occupied, provide support to the local economy and local community facilities. These benefits attract moderate weight in view of the relatively modest quantum of development under consideration.
33. I acknowledge that the scheme's benefits, especially when considered in cumulative terms, would be considerable and attractive of significant weight. However, in recognition of my findings with respect to the effect upon Key View 5 as identified within the ANDP, the harm that would be caused in a

character and appearance sense would be at a substantial level sufficient, in my judgement, to significantly and demonstrably outweigh the scheme's benefits when assessed against the Framework's policies taken as a whole. This is even whilst acknowledging that some landscape/visual harm would be fairly anticipated to arise from any rural exception scheme.

34. Therefore, the presumption in favour of sustainable development, as set out in the Framework, does not apply. Indeed, the scheme conflicts with the development plan when read as a whole, and material considerations, including the Framework, do not lead me to a decision otherwise.

Conclusion

35. For the reasons given above, the appeal is dismissed.

Andrew Smith

INSPECTOR

APPEARANCES

FOR THE APPELLANT

Odette Chalaby	Counsel for the Appellant
Dan Stiff	Director, Boughton Butler Ltd
James Bullock	Director and Partner, Zebra Landscape Architects
Dick Jeavons-Fellows	Appellant

FOR THE COUNCIL

Anna Priestley-Clarke	Planning Officer
Chris Lewis-Farley	Tree and Landscape Officer

INTERESTED PARTIES

Paul Cumming	District Councillor
Pamela Cumming	District Councillor
Catherine Knight	Abberley Parish Council
Lisa Walker	Abberley Hills Preservation Society
Carolyn Coles	Abberley Hills Preservation Society
Janet Osbourne	Local resident

DOCUMENTS SUBMITTED AT OR AFTER THE HEARING

Site photographs, submitted at the hearing by Cllr Paul Cumming

Unilateral Undertaking and accompanying plan, dated 27 November 2023, received via email from the appellant dated 1 December 2023

Statement of Truth relating to land ownership, dated 1 December 2023, received via email from the appellant dated 1 December 2023

Richborough



Costs Decision

Hearing held on 21 November 2023

Site visit made on 22 November 2023

by **Andrew Smith BA (Hons) MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 7th December 2023

Costs application in relation to Appeal Ref: APP/J1860/W/23/3326243 Land at (OS 7474 6805) Apostles Oak, Abberley

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Jeavons-Fellows on behalf of C50 Homes Ltd for a full award of costs against Malvern Hills District Council.
- The appeal was against the refusal of planning permission for outline application (all matters reserved except access) for the construction of up to 14 entry-level affordable dwellings.

Decision

1. The application for an award of costs is refused.

Reasons

2. Parties in planning appeals normally meet their own expenses. However, the Planning Practice Guidance advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The applicant has alleged that the Council behaved unreasonably by delaying development which should clearly have been permitted having regard to national policy, by acting contrary to well-established case law, by making vague and generalised assertions about the scheme's impact, and by expanding its case at appeal stage to entirely new issues beyond those set out in its single reason for refusing planning permission.
4. It is important to note that, whilst the Council resolved to refuse planning permission contrary to a positive recommendation made by its officers, the scheme has been repeatedly objected to by the Council's Tree and Landscape Officer in his role as an expert internal consultee. Based on the written submissions made by this Officer at planning application stage, which were made available to Committee Members and highlight viewpoint-specific concerns (including from the rear of the Village Hall), and which have been repeated/refashioned within the Council's Statement of Case, it cannot be fairly asserted that vague or generalised assertions were made about the scheme's impact. The absence of detailed Committee Meeting minutes does not alter my assessments in this regard.
5. The planning application was determined on a 'straight' rather than 'tilted' balance in lieu, I understand, of a position taken at the Committee Meeting¹ that the Council was able to demonstrate a five-year supply of deliverable

¹ held 5 April 2023

housing sites. Whilst this was inconsistent with a stance taken at a separate appeal hearing² held during the same month, where a narrow supply shortfall was conceded in advance of that event, housing supply calculations/positions can materially evolve over short timeframes, as is reflected in an April 2023 position statement³ where a supply figure in excess of five-years was calculated. Based on the evidence before me, the Council was not bound by the position it took with respect to the separate appeal hearing. In any event, consistent with the outcome of the planning appeal to which this application relates, it would not have been unreasonable to refuse planning permission even had the tilted balance been engaged.

6. Despite brief references within its Statement of Case to services and facilities within Abberley likely already being under pressure and to it being questionable whether the site represents the right location for affordable housing, the Council has confirmed at appeal stage that, from its perspective, the principle of development is not in contention. Moreover, the Council did not make lengthy submissions in these specific respects and has sought, plausibly, to clarify that such references were made in the context of guiding the level of weight to be attributed to benefits associated to the delivery of affordable housing. Accordingly, in this sense, I do not identify unreasonable behaviour necessitating unnecessary expense.
7. Any suggestion that Members of the Committee did not recognise or attach any weight to the benefit of providing new housing (entry-level affordable or otherwise) has not been clearly substantiated. Indeed, the Committee Report that was before them includes a thorough exploration of the benefits associated to the delivery of an entry level exception site and the resolved reason for refusal references identified harm not being 'outweighed' by any identified benefits. Further, the level of weight to be afforded to scheme benefits is a matter for the decision-maker and it was not wholly unreasonable for the Council to assert, at appeal stage, that moderate weight should be attached to the benefit of delivering entry-level affordable housing. This is notwithstanding the specific approach taken by an Inspector⁴ in 2021 to apportioning weight at a site situated elsewhere and within a different local authority area.
8. Whilst the appellant has sounded frustration with respect to the timeliness of the Council's handling of the planning application, it must be noted that costs can only be awarded with respect to unnecessary or wasted expense generated at appeal stage. Moreover, it has not been demonstrated that development was delayed that should clearly have been permitted, nor that the Council acted contrary to well-established case law or made vague or generalised assertions about the scheme's impact. Further, the Council's case at appeal stage was not unfairly expanded so as to incorporate entirely new issues beyond those set out in its reason for refusal.
9. Therefore, in my judgement, unreasonable behaviour resulting in unnecessary or wasted expense has not occurred and an award of costs is not warranted.

Andrew Smith

INSPECTOR

² Appeal Ref: APP/J1860/W/22/3306186

³ Addendum to the South Worcestershire Five Year Housing Land Supply Report April 2023

⁴ Appeal Ref: APP/Y3940/W/20/3249284