



Appeal Decision

Hearing held on 2 October 2024

Site visit made on 2 October 2024

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 November 2024

Appeal Ref: APP/J1860/W/24/3345062

Land at Furrow Close, Holy Green, Upton Upon Severn, Worcestershire, WR8 0RT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Rupert Parkin of Hamelin Partnerships Limited against the decision of Malvern Hills District Council.
 - The application Ref is M/22/01073/FUL.
 - The development proposed is construction of 25 dwellings (100% affordable). This includes a mix of one, two, three and four bedroom properties and the construction of a new internal road, parking, SUDS infrastructure, and Green Infrastructure (including public open space).
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Decision

1. The appeal is allowed, and planning permission is granted for construction of 25 dwellings (100% affordable). This includes a mix of one, two, three and four bedroom properties and the construction of a new internal road, parking, SUDS infrastructure, and Green Infrastructure (including public open space) at Land at Furrow Close, Upton upon Severn, WR8 0RT in accordance with the terms of the application, Ref M/22/01073/FUL, subject to the conditions in the attached schedule.

Applications for costs

2. An application for costs was made by Hamelin Partnerships Limited against Malvern Hills District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. A signed planning obligation by way of Section 106 of the Town and Country Planning Act 1990 (the s.106) has been provided as part of the appeal, with the final counterpart versions dated 27 September 2024 submitted prior to the event. The s.106 includes all of the planning obligations sought by the Council and each of the 3no. counterparts list that each counterpart constitutes a duplicate original, but all the counterparts together constitute the one Deed. However, I return to the s.106 agreement later in my decision.
4. For clarity, Reasons for Refusal (RfR) no's 1 and 2 on the Council's decision notice are covered under the first main issue on this appeal. Furthermore, it has been confirmed in the Statement of Common Ground (SoCG) and verbally at the event that RfR no.5 on the Council's decision notice has been

withdrawn.

Main Issues

5. The main issues of this appeal are:

- The effect on the character and appearance of the appeal site and surrounding area;
- Whether the site would be in a suitable location with particular regard to access to local services/facilities; and,
- Whether the proposed affordable housing mix is appropriate to meet the identified housing need.

Reasons

Background

6. Holly Green is designated as a Category 3 Village in the South Worcestershire Development Plan, 2016 (DP), a fourth-tier settlement (SWDP 2, Table 2) and is therefore suited to accommodate market and affordable housing needs of an appropriate scale. Nonetheless, the site lies outside the settlement in open countryside, where Part C of DP Policy SWDP 2 strictly controls development. The site is not allocated for housing under DP Policy SWDP 58. However, as the proposal is submitted as a 100% affordable housing scheme, it could be considered as a rural exception site under DP Policy SWDP 16, subject to criteria.
7. DP Policy SWDP 58 acknowledges that whilst Holly Green is a Category 3 Village, it has the potential to accommodate some of Upton upon Severn's housing needs. Additionally, it is agreed by the parties that the proposed development is 'small scale'.

Character and appearance

8. The appeal site currently comprises an agricultural field, which amounts to approximately 0.75 hectares in size. Whilst the site is located outside the built-up limits of Holly Green, it is adjacent to it. To the west is existing residential development at Furrow Close. The site has no specific landscape designation in the development plan.
9. DP Policy SWDP 2 makes it clear that development within the open countryside is only acceptable in very specific circumstances and DP Policy SWDP 25 seeks for development proposals and their associated landscaping schemes to demonstrate that they take into account the latest Landscape Character Assessment and its guidelines; they are appropriate to, and integrate with, the character of the landscape setting and they conserve, and where appropriate, enhance the primary characteristics defined in character assessments and important features, and have taken any available opportunity to enhance the landscape, amongst other things.
10. The landscape within the area has been subject to two separate landscape assessments, undertaken at a National and Local scale, these are: National Level: Landscape Character Assessment by Natural England – 106 Severn and Avon Vales, where the lower valleys of the rivers Severn and Avon dominate

this low-lying open agricultural vale landscape made up of distinct and contrasting vales, and Worcestershire Landscape Character Assessment (2012) – Landscape Character Type (LCT): Settled farmlands on river terraces, respectively. This LCT is a medium scale, settled agricultural landscape where horticulture and cropping is the dominant land use, reflecting the fertile free draining soils. The settlement pattern is represented by scattered farms and clusters of wayside dwellings, linked by a matrix of winding lanes. Fields are bounded by hedgerows, with tree cover largely concentrated in groups associated with dwellings.

11. The appellant submitted a Landscape and Visual Impact Appraisal (LVIA) with the application, which I have had regard. The assessment was undertaken during July 2020 when trees and hedgerows were in full leaf. I also viewed the site from majority of locations identified in the LVIA and am satisfied that I saw everything I need to assess the impact of the development.
12. I note the comments of the Council's Tree and Landscape Officer (the TLO), which included a variety of observations including the layout, a failure to incorporate arboricultural assets, earthworks, building materials and the sustainable urban drainage feature, amongst other things. The TLO commented on the LVIA in their latest response, querying why no emphasis has been put on bolstering the boundary hedges with supplemental hedgerow planting and trees. When considering the shape of the site and the need to ensure an appropriate density and other factors, such as the neighbouring development and good amenity for future residents, I consider a linear design to be a logical approach in this instance.
13. The TLO concludes that there will be an welcome intrusion into open countryside, which relates poorly to its surroundings and does not reflect the established built boundary (recent or established) contrary to the conclusion of the LVIA. Given that the LVIA appears to have been produced by a suitably qualified authority, which is not disputed by the council, I have given it significant weight. Additionally, little has been advanced to support the contrary view to those expressed in the LVIA. Consequently, I am satisfied that the remaining concerns raised by the TLO could be adequately controlled by suitably worded planning conditions.
14. The appellant has brought to my attention that since the LVIA was produced a number of significant works have occurred in the locality. These works comprise, the construction of a large roundabout on the A38, which was previously a T-junction. This roundabout has been installed to improve safety at this junction and along the A4104. It will also serve the new Business Park that is planned to the east of the junction. The resultant effects on the character of the landscape, particularly through the associated planting, has assisted in changing the extent to which the site is seen, compared to when the LVIA was originally undertaken. Given the surrounding topography, features, such as trees/hedgerows and the existing development at Furrow Close serving as a backdrop, the proposed development would not adversely affect the wider landscape.
15. Overall, I consider that the planting proposed within the scheme, in conjunction with the extensive planting that has taken place to screen the new highways work will ensure that the proposed development will blend in within its surroundings and ensure no harm to more localised views within the local

landscape. There is no doubt that erecting 25no. dwellings on this greenfield site would result in a change to its character and appearance, but overall, I do not find this change to be harmful. Whilst the development would extend beyond the built-up limits of Holly Green, I consider that the scheme would not harm the setting of Holly Green, given the proximity of the site to neighbouring development at Furrow Close. The growth of Holly Green as a result of the proposed development would be organic, relating well to the pattern of development in the existing settlement.

16. DP Policy SWDP 21 requires development to reflect the local vernacular, reinforce local distinctiveness and integrate and relate to its surroundings. It also seeks development to come forward with an appropriate layout, protect neighbouring amenity, be of appropriate scale, feature good connectivity, protect prominent views, consider the public realm and where necessary incorporate appropriate facilities and support the provision of safe communities. The Council has raised particular concerns regarding the extension of the scheme into the countryside, beyond the existing built-up limits and to the quality of the design.
17. It was established at the event that the neighbouring development at Furrow Close was a consideration in the design of the proposed development. Whilst the Council has referenced: *'a wealth of older properties with traditional detailing as well as some well-designed modern developments'* in its submission, no examples have been provided. I find the residential development at Furrow Close to be an attractive modern housing scheme, which the appeal scheme would be similar to in its scale and design. This would result in a complimentary form of development.
18. For the reasons given above, the proposed development would not harm character and appearance. Consequently, the scheme accords with DP Policies SWDP 2, SWDP 21 and SWDP 25, which seek to safeguard the open countryside, be of high-quality design and integrate with the character of the landscape setting, amongst other things.

Access to local services/facilities

19. It was agreed verbally at the event by the parties that Upton upon Severn would be the closest settlement where majority of the local services and facilities could be found. In its submission, the Council references distances from developments to bus stops in the Worcestershire County Council Streetscapes Design Guide, 2022 (the WCC guide). This document refers to a mean average walk distance for all properties within a development to scheduled bus stops of 400 metres (m) and to a distance of up to 800m will be considered where a high quality, direct and level route is provided¹.
20. However, the WCC guide also states² that walking is generally considered a viable travel choice up to 2000m (25 mins), where short journeys are required. Cycling also has the potential to substitute for short car trips, particularly those under 5km (25 mins) and to form part of a longer journey by public transport. It was agreed verbally by the Council at the event that majority of the facilities and services with Upton upon Severn were within these distances when taken from the appeal site. Although condition of the

¹ 5.2 Bus Routes, page 49

² 2.5 Principles of New Development, page 13

route was referenced as an important consideration.

21. A number of issues were raised at the event surrounding the route from Holly Green to Upton upon Severn, along the A4104 where the view of the Council was that the route was steep with no dedicated cycle route, raising highways safety issues for both pedestrians and cyclists alike. However, whilst there is a footpath that extends the full extent of the route to Upton upon Severn, I recognise that it is on the opposite side of the A1404 to Ryall Road, thus requiring the A1404 to be crossed at some point.
22. Nonetheless, there is a refuge island located a short distance from Ryall Road on the A1404, which greatly enhances road safety, particularly with regard to crossing the A1404 as a pedestrian. I also noted the dedicated cycle lane, but this was beyond Ryall Court Lane on the east bound carriageway travelling towards the A38. I consider that the A1404 is relatively unconstrained, with good sight lines in both directions, where drivers, particularly in the area of the refuge island would be easily able to assimilate the carriageway conditions, when driving along this section of road, thus reducing the potential likelihood of vehicular/pedestrian conflict.
23. I accept that the route to Upton upon Severn from the site is not fully lit by street lights, including the section from Ryall Road along the A1404 to, and including the refuge island. However, most trips would likely occur during daylight hours and there is a lack of an objection from the Development Control Engineer, subject to conditions and contributions to be secured through a planning obligation. Whilst the route would be enhanced if it was fully lit by street lighting, I do not find the current conditions prejudicial to highway or pedestrian safety.
24. At the event, the appellant provided additional details of the local bus services³. The timetables of the 332 and 363 showed that the 332 operated by Astons Coaches, runs 3 buses a day Monday to Friday in both directions, which operate from mid-morning to mid-afternoon. The 332 also operates on a Saturday with an extended service of 5no. buses operating in both directions starting earlier in the morning and finishing later in the afternoon. The 363 operated by First Worcestershire does not operate on Saturday but provides 5no. buses a day in both directions that operate earlier in the morning and later in the day than the 332, albeit the last bus to Worcester starts from Hanley Castle High School.
25. Whilst acknowledging the limitations of the bus services in the locality, including that of the Community Bus too, I am also mindful that the National Planning Policy Framework (the Framework) recognises that opportunities to maximise sustainable transport solutions will vary between urban and rural areas. Nonetheless, in this instance I have no doubt that alternative transport options exist. Given my own experiences driving/walking in the locality, I find that the site is within a safe and reasonable distance of a range of local services and facilities, with genuine opportunities to walk, cycle or utilise public transport.
26. For the reasons given above, I conclude that the proposed development is in a suitable location with particular regard to access to local services/facilities. Consequently, the development would accord with the strategic aims of

³ No. 332 Hanley Castle to Worcester; No. 363 Ryall to Worcester and a Community Bus.

DP Policy SWDP 2, which seeks to encourage development to be located in the most sustainable locations, well located to services and facilities, amongst other things. The scheme also accords with the requirements of the Framework.

Affordable housing

27. The proposed development has been submitted as a Rural Exception Site under DP Policy SWDP 16. However, in addition to housing mix as identified on the decision notice, there is dispute between the parties surrounding compliance with this policy, in particular SWDP 16 A ii and iii. There is no disagreement that the proposed development amounts to a 'small site' and that there is currently no up to date Housing Needs Survey for the parish of Ripple carried out by the Council.
28. There is no doubt that there is a need for affordable housing in the district. Nonetheless, the extent of need is being queried by the Council in its submission. In its response dated 6 March 2023 the Council's Housing Team confirmed that the 'Housing For You' data shows there are currently 67no. households with a local connection to the Parish of Ripple and the surrounding parishes/grouped parishes, albeit only 4no. households were registered with a local connection to the Parish of Ripple. This position was still evident at the time of the event.
29. However, the Council's Housing Team notes that the 'Housing For You' data may be an under representation of those in housing need, particularly in relation to those with a local connection to the Parish of Ripple and with a local connection to the surrounding parishes/grouped parishes, as it is not currently possible to establish employment or close family links, due to limitations with the reporting system. Even so, during discussions at the event it was established that of the allocated sites listed under DP Policy SWDP 58, only SWDP58c remains, which could deliver up to 28no. affordable units. A planning application has been submitted for this site, but to date it has not been determined, where the Council at the event was unable to provide a timescale for its determination.
30. Additionally, I note reference by the Council to other allocated sites within the surrounding parishes which could provide the required affordable housing. However, very little detail has been provided in this regard and to the likelihood of such sites contribution in achieving the necessary targets. Consequently, I am satisfied that the scheme complies with DP Policy SWDP 16 A. ii. Furthermore, it was agreed verbally by the Council at the event that the submission of the s.106 would ensure that the proposed development would comply with DP Policy SWDP 16 A. iii.
31. At the event it was established that the Council's concern surrounding the mix of affordable units was with particular regard to tenure. Reference was made to the Council's Affordable Housing Supplementary Planning Document, 2016 (the affordable housing SPD), which seeks a mix of 80% Social Rented and 20% Intermediate Housing⁴. In this instance, the appellant proposes 15no. dwellings to be delivered as Affordable Rent and 10no. dwellings as Shared Ownership. It is obvious from the responses received that the appellant has

⁴ Paragraph 3.29 of the affordable housing SPD

held discussions with the Council's Housing Team, which resulted in their further response dated 28 September 2023.

32. This latest response from the Council's Housing Team confirms that Housing Officers support the affordable housing tenure split and property types as proposed, which would be secured through the s.106. Whilst noting numerous comments from various parties suggesting that bungalows are required, the comments from the Council's Housing Team are a material planning consideration of significant weight. I also note that the affordable housing SPD refers to the suggested tenure split as the starting point for negotiation, and that this document provides guidance. Also, I recognise that this element is not a requirement to satisfy DP Policy SWDP 16, as suggested.
33. For the reasons given above, I conclude that the proposed affordable housing mix is appropriate to meet an identified housing need. Consequently, the proposed development would comply with the requirements of DP Policy SWDP 16 as a rural exception site, which seeks to support affordable housing development on small sites beyond, but reasonably adjacent to development boundaries, amongst other things. The scheme also accords with the affordable housing SPD and the requirements of the Framework.

Planning obligation

34. The parties have completed the s.106 in conjunction with Worcestershire County Council which includes a number of obligations to come into effect if planning permission is granted. I have considered these in light of the statutory tests contained in Regulation 122 of The Community Infrastructure Levy (CIL) Regulations 2010 and paragraphs 55 and 57 of the Framework.
35. The s.106 contains various provisions and is made up of 3no. counterparts. Nonetheless, I am satisfied that the counterpart s.106 has been correctly executed and is legally valid. The s.106 secures the affordable housing in accordance with the terms set out in the application, including the tenure split and property type. The s.106 also secures contributions towards school and community transport.
36. In view of the above, I consider the obligations set out in the s.106 are necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind. Therefore, they meet the tests within CIL Regulation 122 and those set out in paragraph 57 of the Framework. As such, I have taken them into account in reaching my decision.

Other Matters

37. It is common ground between the parties that the Council cannot currently demonstrate an adequate supply of deliverable housing land. The appellant has provided information which shows that according to the latest Housing Land Supply Report published in April 2024, the supply stands at 3.47 years, which is below the Government's target.
38. I have had regard to the number of objections received from local residents and others, as part of this appeal. I also note the views expressed by the local councillors and residents who attended the Hearing, expressing a wide range of concerns including, but not limited to the following: highway safety; ecology; drainage; school places; living conditions, amongst other things.

However, I note that these matters were considered where relevant by the Council when it determined the planning application. Whilst I can understand the concerns of the interested parties, there is no compelling evidence before me that would lead me to come to a different conclusion to the Council on these matters.

Conditions

39. I have considered what planning conditions would be appropriate in light of the discussions at the Hearing, making amendments and minor corrections, where necessary, to ensure clarity and compliance with the tests contained within Paragraph 56 of the Framework and the Planning Practice Guidance. In addition to conditions relating to the time limit for implementation, for reasons of certainty a condition requiring the development to be undertaken in accordance with approved plans/documents is necessary.
40. Pre-commencement conditions for surface water drainage; renewable and/or low carbon energy generation measures; external materials, windows and doors; Construction Environmental Management Plan; landscaping/planting specification; schedule of maintenance for all open/public spaces; tree protection and compliance are all reasonable and necessary in the interest of the environment, character and appearance, living conditions, highway safety. As these pre-commencement conditions were listed within the signed SoCG, it was agreed verbally at the event that this demonstrates an acceptance by the appellant to them being imposed upon any resultant permission.
41. Pre-occupation conditions for access, parking and turning facilities; vehicle charging points; sheltered and secure cycle parking; Travel Welcome Pack; superfast broadband or alternatives and play area are all reasonable and necessary in the interest of highway safety, sustainable transport, high quality communications and healthy and safe communities. Other conditions for foul and surface water; drainage; hours of construction/demolition works; lighting; Landscaping Welcome Pack and landscaping conformity are all reasonable and necessary in the interest of highways safety, the environment, living conditions and character and appearance.
42. A condition relating to Ultra-Low NOx boilers was originally suggested by the parties, but it was agreed verbally by the parties at the event that this suggested condition should no longer be imposed.

Conclusion

43. It is a requirement for this appeal to be determined in accordance with the development plan unless material considerations indicate otherwise. Accordingly, whilst there is an obvious deficiency surrounding the Council's Housing Land Supply position, which is acknowledged and agreed by the parties in their respective submissions and the SoCG, it is not determinative to this appeal. Thus, given my conclusions on the main issues, it has not been necessary for me to consider matters surrounding housing land supply.
44. For the reasons given above, I conclude that the appeal should be allowed.

W Johnson

INSPECTOR

SCHEDULE OF CONDITIONS

Time Limit

- 1) The development hereby permitted shall begin no later than 3 years from the date of this decision.

Approved Drawings / Documents

- 2) The development hereby permitted shall be carried out in accordance with the following approved drawings:
 - Site Location Plan, Dwg No. 010 Rev. A, dated 7 July 2022;
 - Existing Site Plan, Dwg No. 019, dated 13 June 2022;
 - Proposed Site Layout, Dwg No. 20 Rev. S, dated 4 January 2023;
 - House Type A GA Plans, Dwg No. 30 Rev. E, dated 12 January 2023;
 - House Type A GA Elevations, Dwg No. 31 Rev. D, dated 30 November 2022;
 - House Type C2 GA Plans & Elevations, Dwg No. 32 Rev. C, dated
 - House Type C1 C3 GA Plans, Dwg No. 033 Rev. A, dated 25 April 2022;
 - House Type D5 GA Plans & Elevations, Dwg No. 035 Rev. A, dated 25 April 2022;
 - House Type F F1 GA Plans, Dwg No. 036 Rev. E, dated 16 January 2023;
 - House Type F F1 GA Elevations, Dwg No. 037 Rev. D, dated 26 May 2022;
 - General Arrangement, ref. 22003-IYL-8050-XX-DR-L-2100 Rev. P03, dated 10 January 2023;
 - Planting Strategy, ref. 22003-IYL-8450-XX-DR-L-4100 Rev. P03, dated January 2023;
 - Archaeological Desk Based Assessment, version V.1.0, dated 18 May 2020;
 - Built Heritage Assessment, version 1, dated 18 May 2020;
 - Landscape and Visual Impact Assessment, received 23 August 2022;
 - Planning and Housing Needs Statement, dated July 2022;
 - Design and Access Statement, dated 5 July 2022;
 - Energy Statement, received 23 August 2022;
 - Preliminary Ecological Appraisal, ref. 1950, dated May 2020;
 - Geotechnical Assessment, ref. S1676, dated April 2020;
 - Environmental Report, received 15 July 2022;
 - Borehole Logs, received 15 July 2022;
 - Written Scheme of Investigation & Risk Assessment Method Statements for Geophysical Survey, dated 16 November 2022;
 - Geophysical Survey Report, ref. 10863, dated 1 December 2022;
 - SuDS Drainage Strategy, ref. HGN-BML-ERD-ZZ-RP-C-0500, dated 24 January 2023;
 - SuDS Drainage Proposals Appendix D, dated May 2020;
 - SuDS Hydraulic Calculations for existing drainage, Appendix E, dated 6 May 2020;
 - FloodFlow Analysis 1000 year +0%CC 15 Minute winter storm event, ref. HGN-BML-ERD-ZZ-DR-C-0520 Rev. P03, dated 17 February 2023;
 - Proposed Catchment Areas, ref. HGN-BML-ERD-ZZ-DR-C-0521 Rev. P03, dated 17 February 2023;
 - External Surfaces, ref. HGN-BML-ERD-ZZ-DR-C-0700 Rev. P07, dated 18 January 2023;
 - Arboricultural Report, dated 29 September 2022;

- Operation and Maintenance Manual, ref. HGN-BML-ERD-ZZ-RP-C-0501 Rev. P04, dated 24 January 2023;
- Drainage Details Sheet 1 of 4, ref. HGN-BML-ERD-ZZ-DR-C-0502 Rev. P01, dated May 2020;
- Drainage Details Sheet 2 of 4, ref. HGN-BML-ERD-ZZ-DR-C-0503 Rev. P01, dated May 2020;
- Drainage Details Sheet 3 of 4, ref. HGN-BML-ERD-ZZ-DR-C-0504 Rev. P02, dated 18 April 2023;
- Drainage Details Sheet 4 of 4, ref. HGN-BML-ERD-ZZ-DR-C-0505 Rev. P04, dated 10 May 2023;
- Earthworks Sheet 1 of 3, ref. HGN-BML-XX-XX-DR-C-0600 Rev. P01, dated 17 February 2023;
- Earthworks Sheet 2 of 3, ref. HGN-BML-XX-XX-DR-C-0601 Rev. P01, dated 17 February 2023;
- Earthworks Sheet 3 of 3, ref. HGN-BML-XX-XX-DR-C-0602 Rev. P01, dated 17 February 2023;
- External Surfaces, ref. HGN-BML-ERD-ZZ-DR-C-0700 Rev. P07, dated 17 February 2023;
- Transport Statement, ref. DN/RT/22127-01c, dated 28 April 2023;
- Transport Technical Note, dated 2 May 2023.

Prior to commencement

- 3) Prior to the commencement of the development, details of the proposed route, attenuation basin and point of discharge for the restricted surface water discharge from the site have been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall then be completed in full before any dwelling hereby approved is first occupied and shall be maintained in full working order for the lifetime of the development.
- 4) Prior to the commencement of the development, details of renewable and/or low carbon energy generation measures shall be submitted to and approved in writing by the Local Planning Authority. The measures shall contribute to at least 10% of the predicted energy requirements of each dwelling. The details to be submitted shall include:- the overall predicted energy requirements of the approved development and each dwelling; - the predicted energy generation from the proposed renewable/low carbon energy measures;
 - The location of the proposed equipment along with any technical assessments considered necessary to support the location proposed; and
 - an implementation timetable for the proposed measures. The development shall then be carried out in accordance with the approved details and implemented prior to the occupation of the hereby approved dwellings.
- 5) Prior to the commencement of the development above ground level, samples of the materials to be used in walls and the roofs of the development hereby approved, shall be submitted to and approved in writing by the Local Planning Authority. Once approved, the development shall be carried out in full and strict accordance with those approved details.
- 6) Prior to the commencement of the development above ground level, details of the type, colour, design and material of any windows and doors to be incorporated into the development hereby approved, shall be submitted to and approved in writing by the Local Planning Authority. Once approved, the

development shall be carried out in full and strict accordance with the approved details.

7) Prior to the commencement of the development, a Construction Environmental Management Plan shall be submitted to and approved in writing by the Local Planning Authority. This shall include but not be limited to the following:

- Measures to ensure that vehicles leaving the site do not deposit mud or other detritus on the public highway;
- Details of site operative parking areas, material storage areas and the location of site operatives' facilities offices and toilets as well as any other proposed facilities;
- The hours that delivery vehicles will be permitted to arrive and depart, and arrangements for unloading and manoeuvring;
- Details of any temporary construction accesses and their reinstatement proposals;
- Measures to ensure that noise, dust and vibration are appropriately mitigated;
- Detailed measures to demonstrate that appropriate pollution controls are in place to prevent any spillages spreading onto adjacent land and watercourses.

The measures set out in the approved Plan shall be carried out and complied with in full during the construction of the development hereby approved. Site operatives' parking, material storage and the positioning of operatives' facilities shall only take place on the site in locations as submitted and approved.

8) Prior to the commencement of development, a scheme of soft and hard landscaping shall be submitted to and approved in writing by the Local Planning Authority. The landscaping scheme shall include a plan detailing the disposition of planting, cross referenced to a schedule listing the species, size at time of planting, number of plants proposed or proposed planting density. The approved scheme shall be carried out in accordance with a timetable submitted to and agreed in writing by the Local Planning Authority.

The landscaping scheme submitted shall also demonstrate how the development has achieved the required Green Infrastructure levels in accordance with the Local Plan. If within a period of five years from the date of the planting of any tree, shrub or hedging plant planted pursuant to this condition that tree, shrub or hedging plant, or any tree, shrub or hedging plant planted in replacement for it, is removed, uprooted or destroyed or dies, or becomes, in the opinion of the Local Planning Authority, seriously damaged or defective, poorly established or moribund, another tree, shrub or hedging plant of the same species and size as that originally planted shall be planted at the same place.

The landscaping scheme shall also include locations for public bins and seating areas as well as the type of bins and seats to be provided. These features shall be installed prior to the hereby approved development is constructed in full and in full accordance with the details approved by the Local Planning Authority.

Details of all boundary treatments including any fencing to be erected on site shall also be provided. Those details shall include the height, type and

materials to be utilised in the construction of that fencing and no fencing shall deny the ability for landscaping maintenance to be carried out. Details of the maintenance of the proposed fencing shall also be submitted as well as details as to how old and failing fencing will be replaced with a like for like replacement.

Finally, details of an onsite meeting shall be proposed and take place between the applicant, their chosen landscape contractor and the council's tree and landscape officer. This meeting shall be carried out prior to any works are carried out on site, including site clearance.

- 9) Prior to the commencement of development, a written planting specification shall be submitted to and approved in writing by the Local Planning Authority. This shall include preparatory groundworks, plant handling, and all other operations associated with successful tree, plant, and grass establishment and be in accordance with BS 4428 (1989) - Code of practice for general landscape operations and BS 8545 (2014) - Trees from nursery to independence in the landscape - recommendations. Once approved the development shall be carried out in full accordance with the approved details.
- 10) Prior to the commencement of development, a written schedule of maintenance for all open/public spaces, shall be submitted to and approved in writing by the Local Planning Authority. The approved maintenance schedule shall be carried out for a period of 5 years after planting.
- 11) Prior to the commencement of development, details of tree and hedgerow protection measures (tree protection plan) shall be provided to the local planning authority. Tree protection measure should be in accordance with BS 5837:2012 (Trees in Relation to Design, Demolition and Construction). Before development of any type commences, including site clearance, demolition, materials delivery, vehicular movement and erection of site huts, the approved tree protection measures will be implemented. The approved tree protection measures shall remain in place until the completion of development.
- 12) Prior to the commencement of development and once the approved tree and hedgerow protection measures have been implemented, a letter of compliance, prepared by a suitably qualified arboricultural consultant, shall be submitted to the local planning authority confirming that the measures are in place as approved by Condition 11 of this permission. Compliance will be assessed and a site visit arranged between the Local Planning Authority and developer to verify the installation of the approved tree protection measures prior to any works, including site clearance, are carried out. Once confirmed, the Local Planning Authority will provide formal written confirmation that the measures as approved have been implemented appropriately.

Prior to occupation

- 13) The Development hereby approved shall not be first occupied or brought into use until the access, parking and turning facilities have been provided as shown on drawing ref: 2015-20 Rev S.

- 14) The Development hereby approved shall not be first occupied or brought into use until the proposed dwellings have been fitted with an electric vehicle charging point. The charging points shall comply with BS EN 62196 Mode 3 or 4 charging and BS EN 61851 and the Worcestershire County Council Streetscape Design Guide. The electric vehicle charging points shall be retained for the lifetime of the development unless they need to be replaced in which case the replacement charging point(s) shall be of the same specification or a higher specification in terms of charging performance.
- 15) The Development hereby permitted shall not be first occupied or brought into use until sheltered and secure cycle parking to comply with the Council's adopted highway design guide has been provided in accordance with details which shall first be submitted to and approved in writing by the Local Planning Authority and thereafter the approved cycle parking shall be kept available for the parking of bicycles only.
- 16) The Development hereby permitted shall not be first occupied or brought into use until the applicant has submitted to and had approval in writing from the Local Planning Authority for a residential Travel Welcome Pack promoting sustainable forms of access to the development. The pack shall be provided to each resident at the point of occupation.
- 17) The Development hereby permitted shall not be first occupied or brought into use until details of superfast broadband facilities or alternative solutions to serve the dwellings hereby approved shall be submitted to and approved in writing by the local planning authority. The submitted details shall include an implementation programme. The facilities shall be provided in accordance with the approved details and no dwelling shall be occupied until those superfast broadband facilities have been installed.
- 18) The Development hereby permitted shall not be first occupied or brought into use until details of a play area shall be submitted to the Local Planning Authority for approval. The details submitted shall ensure that the play equipment provided includes a minimum of nine play experiences within the defined play area. The details submitted shall also provide a timetable for the erection of the play equipment on site and its ongoing maintenance including the mechanism that will be utilised to replace any failing piece of equipment with a like for like replacement. Once approved and installed, the play area shall be maintained in good working and visual order to ensure it remains available for use for the lifetime of the development.

Other

- 19) Foul and surface water shall be drained on separate systems at all times for the duration of the development.
- 20) No demolition or construction works shall take place outside the hours of: 08:30-18:00 Monday to Friday; 09:00-13:00 Saturday; and no activity on Sundays or Bank or Public Holidays.
- 21) Prior to their installation on site, any temporary lighting details shall be submitted to the Local Planning Authority for written approval. The details submitted should include the location, lux levels, hours of use and light spill

mitigation measures for any lighting that is deemed to require it when operated upon site. Once approved, those details shall be adhered to throughout the duration of their retention on site.

- 22) Drainage arrangements shall be provided to ensure that surface water from the driveway and/or vehicular turning area does not discharge onto the public or adjacent highway. No drainage or effluent from the proposed development shall be allowed to discharge into any highway drain or over any part of the public highway.
- 23) The residents who first occupy each dwelling, shall be provided with a Landscaping Welcome Pack (LWP). The LWP shall incorporate a plan showing the public landscaped areas, the approved landscaping plan and summarise the approved landscaping maintenance schedule. The LWP shall set out the details of the organisation responsible for the maintenance and their contact details. A copy of the LWP will be sent to the Local Planning Authority.
- 24) Within three months following completion of the approved landscaping (excluding private garden spaces), a statement of conformity, prepared by a qualified landscape architect, shall be sent to the Local Planning Authority to confirm the landscaping scheme has been successfully implemented and approved planting specification. The statement of conformity shall be submitted on an annual basis for a period of five years.

****End of Conditions****

APPEARANCES

FOR THE APPELLANT:

Daniel Henderson of Counsel

Instructed by John Williams of Plan IT
Planning and Development Ltd

He called:

John Williams BA (Hons) MRTPI

Managing Director of Plan IT Planning
and Development Ltd

Dan Stiff BA (Hons) M.Arch
Sue Illman BA (Hons) PPLI HonFSE
HonFellow (UoG)

Director of Boughton Butler Ltd
Managing Director of Illman Young
Landscape Design Ltd

Matthew Hunt BSc (Hons)

Housing Executive at WP Housing

FOR THE LOCAL PLANNING AUTHORITY:

Anna Priestley-Clarke, BA (Hons) DipTP

Principal Planning Officer at
Malvern Hills District Council

INTERESTED PARTIES:

Cllr Jeremy Owenson

Malvern Hills District Council

Cllr Martin Allen

Malvern Hills District Council

Cllr Mark Peters

Ripple Parish Council

Andrew Tate

Local Resident

Chris Haseley

Local Resident

Carol Haseley

Local Resident

HEARING DOCUMENTS

- Bus timetable for the 363
- Bus timetable for the 332
- Details of the Community Bus (CB2)



Costs Decision

Hearing held on 2 October 2024

Site visit made on 2 October 2024

by Mr W Johnson BA(Hons) DipTP DipUDR MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 November 2024

Costs application in relation to Appeal Ref: APP/J1860/W/24/3345062 Land at Furrow Close, Holy Green, Upton Upon Severn, Worcestershire, WR8 0RT

- 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 Rupert Parkin of Hamelin Partnerships Limited for a full award of costs against Malvern Hills District Council.
 - The appeal was against the refusal of planning permission for the construction of 25 dwellings (100% affordable). This includes a mix of one, two, three and four bedroom properties and the construction of a new internal road, parking, SUDS infrastructure, and Green Infrastructure (including public open space).
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Decision

1. The application for an award of costs is allowed in the terms set out below.

Preliminary Matter

2. It was agreed at the event that the Council could submit its response to the applicant's cost claim after the hearing had closed, with a deadline given of no later than the close of business on Friday 4 October 2024. The applicant was extended the same courtesy for the submission of any final comments, with a deadline given of close of business on Monday 7 October 2024. Both parties made their respective submissions in advance of the above deadlines.

The submissions for Mr Rupert Parkin of Hamelin Partnerships Limited (the applicant)

3. The costs application was submitted in writing a day before the event on Tuesday 1 October 2024. The applicant considers the following with regard to reasons for refusal (RfR) on the Council's decision notice. Regarding RfR no.1, the applicant considers a failure to determine similar cases in a consistent manner. Whilst the Council has refused permission for the proposed development, and defend its position at appeal, after having issued permission for the adjacent Furrow Close development that is similar in design terms, without at any stage articulating a single difference between the two. There is a vague, generalised and inaccurate assertion about the proposal's impact, unsupported by any objective analysis. A failure to identify any solid, defensible basis with design evidence, which the design of the proposed development is said to be so inadequate as to result in conflict with the Development Plan, with an incorrect interpretation of Development Plan policy to justify its position.

4. RfR no.2 is similarly considered unreasonable with vague, generalised and inaccurate assertions about the proposal's impact, which is unsupported by any objective analysis. Members did not have before them any cogent landscape and character evidence; the commentary provided by the Council's Tree and Landscape Officer (the TLO) was outside of their expertise. The Council's Statement of Case (SoC) does not offer any concrete detail as to why the proposed development is unacceptable in either landscape character or appearance. The Council has not provided any evidence to support its landscape case. It remains, the only landscape evidence before the Inspector is the Landscape Visual Impact Assessment (LVIA) completed by the Appellant, and the Hearing Statement of Ms Illman, both accompanied by various viewpoints and appendices, which conclude that the impact will not result in policy conflict. There is no evidence to the contrary advanced by the Council, which amounts to unreasonable behaviour.
5. As per RfR no.1, RfR no.3 has not been decided in a consistent manner to similar cases. No differences in terms of sustainability have been identified between the proposed development and the adjacent development on Furrow Close, which is material. There is no transport evidence to support the Council's position and is unsupported. There are contradictions contained in the Council's SoC and Statement of Common Ground (SoCG), which sets out agreement between the parties that that Holly Green "is suited to accommodate market and affordable housing needs". There is also an incorrect interpretation of Development Plan policy to justify its position.
6. In formulating RfR no.4, the Council overruled its own expert consultee, whom identified a need for affordable housing in the local area and supported the housing mix and tenure proposed, with no evidence to the contrary. No new evidence has been provided by the Council in light of the decision of Members to refuse the scheme contrary to the Officer recommendation for approval. As such, the Council's position is unsupported. The Council's Housing Team considered that they were able to identify a need for 67no. homes in Ripple and surrounding parishes. Yet, despite using the same data in its SoC, the Council now purport to identify a need of just 7no. homes, which is unevidenced, unsupported, and thoroughly unreasonable. Whilst there was particular reference to housing mix in RfR no.4, the Council has sought a wider challenge to the rural exceptions policy, none of which are concerned with the question of housing mix. This does not relate to RfR no.4 and constitutes an unreasonable approach to defending the appeal.
7. There was no evidence before the Council to demonstrate that the appeal site comprised best and most versatile agricultural land (BMV land). The Council seeks to defend its position by noting that it "could" have been BMV land. The Council failed to identify its own error for some 4no. months, where the applicant incurred expense, despite the site being under the 2ha threshold as set out in its own policy.

The response by Malvern Hills District Council

8. The response was made in writing and submitted on Thursday 3 October 2024. The Council contends that it has not acted unreasonably in respect of its determination of the planning application. With regard to RfR no.1 it is of the view that the applicant's case attempts to condense the matter of design down to simply the integration with the character of the area and the layout, form

and function of the development.

9. With regard to RfR no.2 It is stated that the Council has submitted no substantive landscape evidence, such as its own viewpoint or landscape character analysis. The comments of the TLO are clearly documented within the Officer Report, submitted with the Questionnaire and reflected in the Council's SoC. The SoC clearly expands on the reason for refusal and analyses the surrounding landscape. Severe and substantial harm to the landscape character and visual amenity of the area was identified by the Council at the time of making its decision and this view was supported by the comments of the TLO.
10. The claim surrounding RfR no.3 that the Council has failed to determine similar cases in a consistent manner, referring in particular to the adjoining development at Furrow Close (15/00684/FUL). With regard to that development, the decision to grant permission was taken in context of a different Local Plan and an older version of the National Planning Policy Framework (the Framework), such that the Policy context is not the same. The Council's findings on locational sustainability have been well considered, evidenced (as per the SoC which identifies available services and facilities) and are based on current guidance and standards.
11. In respect of RfR no.4, whilst Housing Officers were happy to accept the 60/40% split in terms of the tenure, this was not the view of the decision makers at the Planning Committee. As per the Council's Adopted Affordable Housing Supplementary Planning Document, 2016 (the SPD) the view was that the development tenure should meet with the requirement of 80% Social Rented and 20% Intermediate Housing Products. Whilst the SPD is a guidance document, it is adopted and more recent than the Development Plan such that it can be afforded considerable weight. The Council considers that it had a sound basis on which to make the decision it did, having regard to the affordable housing needs for the area. The SoC does not attempt to expand on the reason for refusal, but simply provide context to the Council's decision making process.
12. With regard to RfR no.5 surrounding BMV land, at the time of determining the planning application the land comprising the site was known to be Grade 3, so could have been BMV land. The knowledge that the land comprising the site is Grade 3b has only been established by the Agricultural Land Classification Report, dated May 2024 (ALCR), submitted with the appellant's statement of case and this information was not available at the time the decision was taken. Whilst picked up by the Council after producing its SoC through the production of the SoCG, this is a legitimate part of the appeal proceedings and the retraction of RfR no.5, following the submission of the ALCR has not resulted in a loss of any time, resource or money for the appellant.

Reasons

13. The Planning Practice Guidance (PPG) 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. These may be either procedural in regard to behaviour in relation to completing the appeal process or substantive which relates to the planning merits of the appeal. A successful application for costs needs to clearly demonstrate how any alleged unreasonable behaviour has resulted in

- unnecessary or wasted expense and parties in the appeal process are normally expected to meet their own expenses.
14. The PPG states that local planning authorities are at risk of an award of costs if they behave unreasonably with respect to the substance of the matter under appeal. Examples include: preventing or delaying development which should clearly be permitted, having regard to its accordance with the development plan, national policy and any other material considerations; failure to produce evidence to substantiate each reason for refusal on appeal; vague, generalised or inaccurate assertions about a proposal's impact, which are unsupported by any objective analysis, amongst other things.
 15. I recognise that the Council is not duty bound to follow the advice of its professional officers. However, if a different decision is reached then the Council has to clearly demonstrate on planning grounds why a proposal is unacceptable and provide clear evidence to substantiate that reasoning. Whilst the Council's RfRs on its decision notice are complete, precise, specific and in most cases relevant to the application, I have found issues surrounding the RfRs.
 16. I accept that matters of design are subjective, but whilst the Council refers to "a wealth of older properties with traditional detailing, as well as some well-designed modern developments" no examples are given. Furthermore, when asked at the event to expand on its comments where the proposed design was considered "bland" and "not present the "high quality" that is required by Policy SWDP21" in its SoC, there was nothing of substance added verbally. I note that the Council in its response to this application now considers the existing development at Furrow Close adjacent to the appeal site to be "higher quality" than the appeal scheme, but this view was not as clearly expressed at the event, or in its submissions. Additionally, in the response to this application, the Council refer to para 7.2.6 of the Officer Report stating that Members acted on the objections received. However, within the same paragraph it also states "Officers understand that concern but it is clear that the design as proposed is not significantly different to those properties already constructed on Furrow Close and the Beeches".
 17. The Council is of the view that the existing development at Furrow Close was subject to different local policies and an earlier version of the Framework. However, the Officer Report to Planning Committee for the proposed development states that planning application (15/00684/FUL) for 33 dwellings was approved on 25 May 2016, approximately 3 months after the current Development Plan was adopted. Additionally, the first version of the Framework advocated high quality design in new development, similar to the latest version. Consequently, I find a lack of consistency in the determination of the appeal scheme with regard to design and RfR no.1, when compared against the existing development adjacent to the site.
 18. Again, like design there is some subjectivity surrounding RfR no.2 and landscape character. The applicant provided a LVIA with the planning application, supported by various viewpoints and appendices. In support of their appeal, the applicant has also brought in a landscape specialist. Whilst noting the comments of the TLO and their objection, I find nothing within the Council's submission that clearly refutes the findings of the LVIA. Additionally, the Council has not supplied any further evidence to the contrary at appeal that

would advance an alternative argument to that put forward by the applicant. Consequently, I consider RfR no.2 has not been adequately substantiated.

19. It will be seen from my Decision that I do not agree with the Council with regard to RfR no. 3, as I consider that the proposed development is in a suitable location with particular regard to access to local services/facilities. At the event additional information was provided by the applicant surrounding local bus services, which was not disputed. Furthermore, the journey to Upton upon Severn along the A1404 was discussed. From my own site visit I established the journey to Upton upon Severn was one that could be undertaken on foot or by bicycle, without experiencing any extreme topography or conditions prejudicial to highway or pedestrian safety, albeit I recognised the entire distance does not benefit from street lighting.
20. Additionally, in its submission the Council refers to distances to bus stops in the Worcestershire County Council Streetscapes Design Guide, 2022 (the Design Guide) to support its position in relation to RfR no.3. However, in the same document, other distances are referenced in 'Principles of New Development', that demonstrate Upton upon Severn is within walking and cycling distances when travelling from the appeal site. This is a considerable oversight by the Council. Taking all of this together, and the oversight by the Council with regard to the Design Guide, there is an obvious lack of evidence to support its position. Furthermore, when considering the existing development on Furrow Close, there is a lack of consistency in the determination of the appeal with regards to this matter. I also find on this matter a lack of clarity by the Council in its interpretation of Policy SWDP 2 of the South Worcestershire Development Plan, 2016.
21. In relation to RfR no.4, there was clear evidence in support of the proposed development from the Council's Housing Team, which the Council in its submission acknowledges. However, in its submission, the Council appears to reach its own findings to support its position, contrary to that advanced by its own Housing Team. Additionally, in the Council's submission there appeared to be confusion surrounding the sites highlighted in Policy SWDP 58 and the number of affordable units that could potentially come forward. However, even taking the figures advanced by the Council, there would still be a shortfall of affordable dwellings, when compared against the proven need.
22. Given that the Housing Team has identified a proven and unmet local need for affordable housing, with no other suitable and available sites within the development boundary of the settlement and that a counterpart planning obligation has been submitted to secure the affordable housing for local people, the proposed development clearly meets the requirements of Policy SWDP 16. Whilst noting the dispute surrounding housing mix, it was established at the event that the concern from the Council on this issue relates to the tenure requirements.
23. The SPD clearly sets out: "the requirement sought between the tenures will be 80% social rent and/or affordable rent and 20% intermediate products". However, the SPD then goes on to advise: "This will be the starting point for negotiation". It is abundantly clear from the evidence that the appellant and the Housing Team held discussions in arriving at the proposed tenure mix. This aspect appears to have been given little acknowledgement by the Council in its decision to refuse the proposed development and in its submission at appeal.

24. I cannot find any evidence in the Officer Report to Planning Committee, to suggest that the site comprises BMV land. Even if the Council did have concerns surrounding BMV land, it was evident at the time of its determination that the site was below the 2ha threshold as set out in Policy SWDP 13H. Nonetheless, as part of the applicant's appeal submission an ALCR was provided. This report clearly identifies the land comprising the site as Grade 3b, which is not BMV land. This report was available to the Council before it submitted its SoC, yet the Council still referred to land comprising the site as Grade 3 BMV land. In arriving at this position, the Council state at 2.4 of its SoC "The land is understood to be Grade 3 agricultural land". It does not state how this conclusion has been reached or on what evidence, contrary to that provided by the applicant. The Council later agreed that the site did not comprise BMV land in the SoCG dated 19 August 2024.
25. Overall, unreasonable behaviour has been demonstrated, which has prevented and delayed development that should clearly have been permitted, having regard to its accordance with the development plan. In each RfR there has been a failure to produce evidence to adequately substantiate each reason for refusal on appeal and evidence of vague, generalised and inaccurate assertions about the proposal's impact, which have been unsupported by any objective analysis. There is also evidence of the Council not determining similar cases in a consistent manner, with regard to RfR no's 1, 2 and 3. Furthermore, and with particular regard to RfR no's 4 and 5 there is also inaccurate information that has been provided by the Council to support its position. Finally, within RfR no.5 there is evidence of the Council not reviewing its case promptly following the lodging of the appeal, as part of sensible on-going case management.

Conclusion

26. For the reasons given above, unreasonable behaviour resulting in unnecessary or wasted expense has occurred and a full award of costs is therefore warranted.

Costs Order

27. In exercise of the powers under section 250(5) of the Local Government Act 1972 and Schedule 6 of the Town and Country Planning Act 1990 as amended, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Malvern Hills District Council shall pay to Mr Rupert Parkin of Hamelin Partnerships Limited, the costs of the appeal proceedings described in the heading of this decision, such costs to be assessed in the Senior Courts Costs Office if not agreed.

The applicant is now invited to submit to Malvern Hills District Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount.

W Johnson

INSPECTOR