

Appeal Decision

Site visit made on 18 September 2024

by S Rawle BA (Hons) Dip TP Solicitor

an Inspector appointed by the Secretary of State

Decision date: 2nd October 2024

Appeal Ref: APP/J1860/W/24/3339553

Land at Martley Road, Lower Broadheath

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr Wolton of Harry Wolton Ltd against the decision of Malvern Hills District Council.
 - The application Ref is M/22/00590/OUT.
 - The development proposed is for up to 28 dwellings (40% affordable housing).
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Decision

1. The appeal is allowed and planning permission is granted for up to 28 dwellings (40% affordable housing) at Land at Martley Road, Lower Broadheath in accordance with the terms of the application, Ref M/22/00590/OUT, subject to the following conditions;
 - 1) Details of the appearance, landscaping, layout, and scale, "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
 - 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
 - 3) The development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.
 - 4) The development hereby permitted shall be carried out in accordance with drawing nos 1833 100 Rev C; DR C 9003(1) Rev C; and DR C 9003(2) Rev B.
 - 5) No development (including demolition) shall take place until:
 - (i) An archaeological field evaluation has been carried out in accordance with a specification and timetable that shall first have been submitted to and approved in writing by the local planning authority; and
 - (ii) Safeguarding measures to ensure the preservation in situ of important archaeological remains and/or further archaeological

investigation and recording identified in the archaeological field evaluation have been undertaken in accordance with a specification and timetable that shall first have been submitted to and approved in writing by the local planning authority

- 6) No development (including demolition) shall take place other than in accordance with the Written Scheme of Investigation approved under condition 5.
- 7) No other development shall take place until the access and highway works shown on drawing DR C 9003(1) Rev C have been constructed and open to traffic.
- 8) No development shall take place until a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the local planning authority.

The submitted details shall:

- i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
- ii) include a timetable for its implementation; and,
- iii) provide, a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

The development shall be carried out in accordance with the approved details. The sustainable drainage system shall be managed and maintained thereafter in accordance with the approved management and maintenance plan.

- 9) No development, including demolition and site ground clearance shall take place until details relating to biodiversity net gain and the protection of great crested newts have been submitted to and agreed in writing by the local planning authority. Development shall be undertaken in accordance with the approved details. Details shall include, but not be limited to:
 - Confirmation of the off-site pond locations, details of previous surveys including dates, information of the number of great crested newts recorded and the estimated population size as well as updated information on the current condition of any ponds;
 - Completion of the Natural England Rapid Risk Assessment tool to assess the likelihood of the proposed works unacceptably impacting great crested newts;
 - Measures to ensure adequate protection for great crested newts are incorporated into the final design of the development subject of the application for the approval of all reserved matters; and

- Measures to ensure adequate biodiversity net gain measures in accordance with the assumptions set out in the biodiversity net gain letter dated 13 May 2022 from Brown Fisher Environmental and the biodiversity impact assessment summary are incorporated into the final design of the development subject of the application for the approval of all reserved matters.
- 10) No dwellings shall be occupied until works for the disposal of sewage have been provided on the site to serve the development hereby permitted, in accordance with details that have first been submitted to and approved in writing by the local planning authority.
 - 11) No dwellings shall be occupied until the visibility splays shown on drawing no DR C 9003(1) Rev C have been provided. The visibility splays shall at all times be maintained free of level obstruction exceeding a height of 0.6 metres above the adjacent carriageway.
 - 12) The finished floor levels of any buildings shall be set no lower than 23.3m AOD unless otherwise agreed in writing by the local planning authority.
 - 13) Any contamination that is found during the course of construction of the development hereby permitted that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended until a risk assessment has been carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found, the development shall not resume or continue until remediation and verification schemes have been carried out in accordance with details that shall first have been submitted to and approved in writing by the local planning authority.
 - 14) The application for reserved matters shall include a scheme for the protection of any retained tree or hedge (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced). The tree protection plan shall include a plan showing all trees and hedges to be retained in accordance with the recommendations contained within the Pre-development Tree Survey dated 4 April 2022 (the retained trees and hedges plan). The tree protection plan and the arboricultural method statement shall be submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved. In this condition "retained tree or hedge" means an existing tree or hedge which is to be retained as shown on the retained trees and hedges plan as approved as part of the tree protection plan.
 - 15) The application for reserved matters shall include a Construction Method Statement which shall be submitted to and approved in writing by the local planning authority. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;

- iii) storage of plant and materials used in constructing the development;
- iv) the erection and maintenance of security hoarding;
- v) wheel washing facilities;
- vi) measures to control the emission of dust and dirt during construction;
- vii) a scheme for recycling/disposing of waste resulting from demolition and construction works;
- viii) delivery, demolition and construction working hours.

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 16) The land levels within the lower part of the site, outside of the developable area, adjacent to Laugherne Brook, shall not be altered or heightened at any time, without the written approval of the Local Planning Authority.
- 17) With the exception of works required to implement the approved new vehicular access point the existing site entrance shall be stopped up and no access taken from this point for any other construction or storage purpose associated with the development hereby permitted. The proposed access shall be provided and thereafter will be used to provide access for all construction traffic. In addition;
 - There shall be no storage or other use associated with construction made at any time of the land shown shaded green and annotated 'Public Open Space' alongside the Laugherne Brook on the indicative site plan (drawing no 1833 202B).
 - All works including storage and any temporary construction pound associated with the construction of the proposed access shall take place within the indicative residential land shown shaded brown on the indicative site plan (drawing no 1833 202B) unless otherwise agreed in writing by the Local Planning Authority.

Preliminary Matters

- 2. The description of development included on the application form contained matters that are not acts of development and consequently I have removed these from the description set out above.
- 3. The planning application was submitted in outline with all matters except access reserved for future consideration. I have assessed the proposal on this basis and with the exception of the access drawings I have treated all other drawings as illustrative.

Main Issues

- 4. The main issues are:

- Whether or not the appeal site is an appropriate location for the proposed development having regard to the settlement strategy and development plan policies relating to development within an area designated as a Significant Gap; and
- Whether or not the proposal would provide sufficient provision for secondary school places.

Reasons

Whether or not an appropriate location

5. The appeal site comprises an area of predominantly open land currently separated into a number of paddocks with some stable units adjacent to Martley Road which is in close proximity to the district boundary of the City of Worcester.
6. Adjacent to the eastern and southern boundaries is existing residential development and across the road to the north is currently employment land which I understand is allocated for residential development and benefits from outline planning permission for 42 dwellings. Although to the west there is open land, this has been allocated for the Worcester West urban extension (WWUE) with outline planning permission granted for up to 1400 homes.
7. I agree with the Officer's Report to the relevant planning Committee (Officer's Report), which sets out that the appeal site is effectively surrounded and enclosed by existing built form or built form for which an outline planning permission exists and applications for reserved matters are and have been forthcoming.
8. The proposal would involve the introduction of up to 28 dwellings, 40% of which would be affordable. At this stage, the plans showing the layout are illustrative, but as the Officer's Report highlights, they show that a significant area of the appeal site would be used for green infrastructure which would be consolidated and located on the lower land adjacent to Laugherne brook. The illustrative plans show this may include public open space, an attenuation swale and a possible inaccessible space to offer bio-diversity enhancement.
9. The appeal site comprises part of a Significant Gap. Policy SWDP 2 of the South Worcestershire Development Plan adopted February 2016 (SWDP) sets out the development strategy and settlement hierarchy and among other things highlights that development proposals should ensure the retention of the open character of the Significant Gaps.
10. The explanatory text explains that the purpose of maintaining these gaps is to provide additional protection to open land that may be subject to development pressures and to help maintain the clear separation between smaller settlements and urban areas in order to retain their individual identity. The proposal does not meet any of the suggested acceptable types of development. As a result, the relevant development plan policy does not support the introduction of the proposed development at the appeal site.

11. However, the conflict with this particular development plan policy is moderated by the fact that as set out in the Officer's Report, a scheme could be brought forward at the reserved matters stage that would ensure that the open gap would not be strictly lost as the illustrative plan demonstrates that it would be possible to accommodate the proposed number of dwellings while retaining much of the site's green infrastructure alongside the brook providing for a swath of open space which would retain a sense of openness between the proposed dwellings and the existing housing to the east and south of the appeal site.
12. Further, the appeal site is located just outside the city of Worcester and the associated extensive services and facilities, including primary and secondary schools are capable of being accessed via a choice of transport options. Moreover, the proposal would accord with the National Planning Policy Framework (the Framework) as the sustainable transport options, coupled with the range of day-to-day facilities within walking and cycling distance, would give future residents a genuine choice of sustainable modes of transport, which would in turn help reduce reliance on the private car.
13. This would promote sustainable patterns of development in accordance with the Council's overall development strategy and the Framework. The proposal would also accord with Policy SWDP 4 of the SWDP that seeks, amongst other things, to promote development that will minimise the demand for travel by private cars and offer genuinely sustainable travel choices.
14. The proposal would conflict with Policy SWDP 2 of the SWDP as the appeal site would diminish the open character of the appeal site as it would introduce dwellings and associated development on a significant part of the appeal site. However, depending on the ultimate layout brought forward at the reserved matters stage, it could retain a significant open, green area to provide a gap between the existing residential development to the east and south and the developed part of the appeal site. Moreover, the site is well located to services and facilities and to public transport links.
15. I therefore conclude that the proposed dwellings would diminish the open character of the appeal site in conflict with Policy SWDP 2 of the SWDP. However, any harm caused by the conflict would be minor as the proposal would accord with the Framework's aims of promoting sustainable development and would promote walking, cycling and public transport and thus limiting the need to travel. Consequently, I afford this issue limited weight in the determination of the appeal.

Provision of School Places

16. According to the Childrens Services team of the County Council (Childrens' Services), the catchment for the development are Broadheath Church of England Primary School and The Chantry School. Moreover, they note that due to the proximity of the proposed development to Worcester there are several other primary and secondary schools deemed to be within statutory walking distance. They highlight that there is a sufficient level of funded early years childcare places in three wards close to this development and sufficient places for the expected demand for primary school places. However, they also confirm that there are insufficient places for the

estimated secondary school aged children expected as a result of the proposal.

17. Consequently, they confirm that a secondary school contribution in accordance with a set formula is required to be used for the provision of additional education facilities at The Chantry School or any other existing or new related school that will serve the development. Subject to such contribution being secured Childrens' Services do not object to the proposal. The appellant has submitted a completed s106 agreement which has been executed by the County Council and secures the secondary school contribution in accordance with the set formula. Given the shortfall in secondary school places I am satisfied that the planning obligation in relation to the education contribution is necessary to make the proposed development acceptable in planning terms, directly relates to the proposed development and is fairly and reasonably related in scale and kind to the proposed development.
18. The Council has expressed concern that there is a lack of convenient access to a secondary school for new residents which would lead to a greater reliance on the use of the private car and consequently the proposal would constitute an unsustainable form of development. However, that is contrary to the information provided by Childrens' Services. Moreover, given my finding above that the proposal would be well related to services and facilities, including primary and secondary schools I do not agree that the proposal would constitute an unsustainable form of development. This is supported by the information provided by the appellant which demonstrates that there is a convenient bus pick up and drop off point for The Chantry School within an easy walk of the appeal site.
19. I have also taken account of the information included within the Education Sufficiency Annual Update. This recognises that the significant housing growth associated with WWUE will result in significant additional demand for secondary school spaces. The proposal would result in a relatively modest increase in the total demand which could be included in the plans that are being prepared to ensure the school needs associated with the WWUE are met. Bearing in mind that there would be an appropriate education contribution secured through the executed s106 agreement, I am satisfied that adequate provision would be made for any secondary school pupils that would live in the proposed dwellings.
20. I therefore conclude that the proposal would make sufficient provision for secondary school places. Moreover, there would not be a lack of convenient access to a secondary school and so the proposal would not constitute an unsustainable form of development. Consequently, in relation to this issue the proposal would not be at odds with Policies SWDP 1, SWDP 2 and SWDP 7 which among other things support a positive approach that reflects the presumption in favour of sustainable development, facilitates the delivery of sufficient housing and seeks to ensure development contributes towards the provision of the infrastructure needed to support it.

Other Matters

21. I turn now to consider housing supply. The Council accept that they cannot demonstrate a 5-year supply of housing and based on the available evidence

the Council can only demonstrate 3.31 years of housing land supply. This is well below Government expectations.

22. The proposal would be valuable in boosting housing stock in circumstances where there is an existing shortfall. The proposal would also have modest economic and social benefits. For example, it would provide some jobs and create demand for materials during the construction phase, would broaden the availability of housing in the area and once occupied would support the existing services and facilities in the area. Overall, I afford the provision of up to twenty-eight dwellings significant weight in the determination of the appeal.
23. I have taken account of concerns that have been raised in relation to flood risk, highway safety and impact on trees and wildlife. In relation to flood risk, the Environment Agency were satisfied that the illustrative plan showed a sequential approach with all built development on land at the lowest risk of flooding. As a result, they did not object to the proposal subject to the implementation of suitably worded conditions in relation to drainage and site levels. I agree with that analysis.
24. In relation to highway safety, I am satisfied that the proposed access arrangements would be suitable for the proposed development and would not result in unacceptable harmful highway safety concerns. Moreover, I am satisfied that following submission of a preliminary ecological appraisal, relevant wildlife can be protected through the imposition of an appropriate condition and similarly a condition would also secure adequate biodiversity net gain. Further, a condition would also ensure that any trees of high amenity value would be protected. It follows that none of these matters weighs against the proposal.
25. I note that the s106 also includes obligations in relation to affordable housing, public open space and an NHS Clinical Commissioning Group contribution. I am satisfied that the planning obligation in relation to these matters is necessary to make the development acceptable in planning terms, directly relates to the proposed development and is fairly and reasonably related in scale and kind to the proposed development. As these matters are necessary to make the proposal acceptable in planning terms I afford them neutral weight in the determination of the appeal.

Planning Balance

26. A decision on whether to grant planning permission must be made in accordance with the relevant policies in the development plan, unless there are material considerations, such as those in the Framework, which indicate otherwise.
27. I have afforded some matters weight as outlined above and I afford the totality of the benefits significant weight in the determination of the appeal. On the other hand, I have found that the proposal would diminish the open character of the appeal site and would thereby conflict with Policy SWDP 2 of the SWDP. However, for the reasons set out above I have afforded that issue limited weight.

28. As outlined, the Council confirm that it cannot demonstrate a four-year supply of deliverable housing sites. Thus, paragraph 11(d) of the Framework, is engaged. 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 policies in the Framework taken as a whole.
29. Whilst the proposal would conflict with Policy SWDP 2 of the development plan, the material considerations I have outlined above, including guidance within the Framework, are sufficient to clearly outweigh this conflict. Consequently, the scheme would represent sustainable development within the meaning of paragraph 11(d) which weighs substantially in favour of the scheme and indicates that planning permission should be granted.
30. In reaching that view I have had regard to the Written Ministerial Statement and draft National Planning Policy Framework published on 30 July 2024. National policies relating to housing land supply are proposed to change as part of this consultation and consequently it has been necessary to consult the parties.
31. However, given that any changes are at the consultation stage they can only be given limited weight in the determination of the appeal and have not changed the weight I have allotted to different matters.

Conditions

32. I have had regard to the conditions suggested by the Council and amended and reordered them as necessary in the interests of conciseness, precision and clarity, as well as to comply with advice in the Framework and Planning Practice Guidance (PPG). It is necessary to impose some pre-commencement conditions and the appellant has confirmed that they agree to such conditions.
33. In addition to the standard conditions requiring that the application for reserved matters is made within a certain period, a condition is needed to secure compliance with the approved plans that relate to access for the avoidance of doubt and in the interests of proper planning. However, given that appearance is a reserved matter it is not necessary at this time to impose a condition in relation to details of materials nor is it appropriate to require compliance with the indicative site plan. In the interests of the historic environment, it is necessary to impose a condition to protect any archaeological remains on the appeal site.
34. In the interests of highway safety, it is necessary to impose conditions in relation to visibility splays, access and highways works and to ensure the existing site access is stopped up. To ensure that the area is protected from contamination it is necessary to impose a condition.
35. To protect the area from flood risk it is necessary to attach conditions requiring the implementation of a sustainable drainage scheme, to ensure finished floor levels (FFL) are set at an appropriate level and that land adjacent to Laugherne Brook is not altered or heightened. In relation to the FFL, I note that the suggested condition has made reference to the submitted flood risk assessment (FRA). However, the level in the suggested

condition is slightly different to that included in the FRA. As the appellant has been given the opportunity by me to review the conditions, I have retained the level included in the suggested condition, but I provide some flexibility as the FFL can be altered if agreed by the local planning authority in writing.

36. To ensure that an appropriate sewage system is implemented it is necessary to impose a suitably worded condition. To ensure that the proposal does not adversely impact protected species and provides biodiversity enhancements it is necessary to impose relevant conditions.
37. To ensure trees and hedges of high amenity value are protected and the living conditions of neighbours are protected it is necessary and reasonable to impose conditions to ensure reserved matters include an appropriate tree protection plan, an arboricultural method statement and a construction method statement. In the suggested conditions these matters were amalgamated, but it is appropriate to separate them into individual conditions.
38. Bearing in mind that my decision includes a clear description of the maximum number of dwellings that can be developed, it is unnecessary to include a condition specifying the maximum number of dwellings permitted.

Conclusion

39. The proposed development would conflict with the development plan, but material considerations indicate that a decision should be made other than in accordance with it. I therefore conclude that the appeal should be allowed.

S Rawle

INSPECTOR