

Appeal Decision

Site visit made on 5 July 2016

by Paul Singleton BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 31 August 2016

Appeal Ref: APP/L3245/W/16/3147519

Land off Avenue Road, Broseley, Shropshire TF12 5AS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by The Willey Estate against the decision of Shropshire Council.
 - The application Ref 14/04019/OUT, dated 3 September 2014, was refused by notice dated 6 October 2015.
 - The development proposed is an outline application for mixed residential and employment development (all matters reserved).
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Decision

1. The appeal is allowed and outline planning permission is granted for mixed residential and employment development (all matters reserved) at Land off Avenue Road, Broseley, Shropshire TF12 5AS in accordance with the terms of the application, Ref 14/04019/OUT, dated 3 September 2015, subject to the conditions set out in the schedule to this decision.

Preliminary Matter

2. The application originally sought approval to the details of the proposed site access as part of the outline permission but, following discussion with the local highway authority, the appellant agreed that these details should be reserved for subsequent approval. I have considered the proposal on that basis.

Main Issues

3. The main issues are: (a) whether the appeal site is an appropriate location for residential development having regard to the relevant local and national planning policies, (b) the extent to which the proposal would result in the loss of part of the Broseley employment land allocation and, (c) whether the provision of a serviced access to the proposed area of employment development would be a material consideration of sufficient weight to justify a grant of permission contrary to the provisions of the development plan.

Reasons

Suitability of site

4. Although the appellant company suggests that there has been some record of under-delivery in meeting housing land requirements and refers to the Teale
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Drive, Ellesmere decision¹ it does produce any evidence which seriously challenges the Council's statement that a housing land supply of 5.53 years can be demonstrated. Moreover, in relation to Teale Drive, the Secretary of State has concurred that the decision should be quashed. Hence, I have no reason to regard the relevant development plan policies for the delivery of housing as being out of date having regard to the advice at paragraph 49 of the National Planning Policy Framework (Framework). The appellant has referred to the judgment in the Wychavon² case to argue that the principle of sustainable development referred to in paragraph 14 of the Framework should apply even where there is an up to date plan. However, the judge's remarks on that matter were made in obiter and there is no requirement that a decision maker should follow them.

5. The adopted Shropshire Local Development Framework: Adopted Core Strategy (2011) (Core Strategy) designates Broseley as a Key Centre. Policy CS3 states that the Key Centres will maintain and enhance their role in providing facilities and services to their rural hinterlands and that balanced housing and employment development will take place within the towns' boundaries and on sites allocated for development. The development boundary for Broseley has recently been amended through the adoption, in December 2015, of the Site Allocations and Management of Development Plan (SAMDev).
6. A rectangle of land in the appellant's ownership has been allocated under Policy 4.1 of that Plan for Class B1 employment use (Site ELR017) but the northern boundary of this allocation follows no field boundary or existing features on the ground. Neither does the allocated site include any land fronting on to Avenue Road although the Development Guidelines, on Page 121 of the Plan, state that the development will have access directly from that road. The revised development boundary has been drawn to include the employment land allocation but to exclude the appellant's ownership between that allocation and the site frontage to Avenue Road. The land excluded from the development boundary is classed as open countryside but the amended boundary has a rather contrived appearance in that it excludes a small rectangle of land which is enclosed on three sides by existing or proposed development and across which a new road would need to be built in order to access the employment allocation.
7. Although the application was submitted in outline, a development of 12 houses along the lines shown in the indicative layout plan would result in more than half of the proposed units being within the development boundary where residential development is positively supported by Core Strategy Policy CS3. The remaining units, and much of the site access road, would be within the area classed as open countryside, where Policy CS5 states that new development will be strictly controlled in accordance with national planning policies protecting the countryside. Relevant national policy is found in the Framework.
8. Given the site's location and its easy accessibility to the wide range of shops and services in Broseley town centre, new housing on this part of the appeal

¹ APP/L3245/W/15/3067596

² *Wychavon v SSCLG and Crown House Developments Ltd [2016] EWHC 592 (Admin)*

site would not constitute the development of isolated homes in the countryside and would not conflict with paragraph 55 of the Framework this regard. The Avenue Road frontage to the appeal site is heavily screened by mature trees and hedges with the trees being the subject of a Tree Preservation Order (TPO). Other than for the limited clearance required to facilitate the site access, this screening would be retained and the avenue character of the road would largely be preserved.

9. Having regard to the presence of that extensive screening and the enclosure of the appeal site by existing and proposed development, and to the Council's intention that an industrial access road be built across it, its development as proposed would result in a minimal encroachment into the open countryside and no material harm to the landscape character of the more extensive area of open land to the south. Accordingly, the proposal would not conflict with the Framework's Core Planning Principles with regard to the protection of the intrinsic character and beauty of the countryside.
10. I accept that Policy CS5 gives no express support for open market housing and that the proposal would not fall within the list of exceptions set out in that policy, although the policy does provide some support for the affordable housing element of the proposal. However, having regard to my conclusions as to the absence of any conflict with the national planning policies to which Policy CS5 defers, I find that the proposal would be consistent with that policy. The housing proposed on that part of the appeal site outside of the development boundary would, however, conflict with SAMDev Policy MD7a which states that new market housing will be strictly controlled outside of the designated locations; the proposed development on the open countryside component of the site would not fall within any of the exceptions listed in MD7a.
11. SAMDev Policy MD3 states that, in addition to the development of the allocated housing sites, planning permission will be granted for other sustainable housing development having regard to the policies of the Local Plan including Policies CS5 and MD7a. The explanatory text to that policy clarifies that the Council considers windfall development to be important both within settlements and in the countryside, including both on brownfield and, where sustainable, greenfield sites.
12. The Council advises that the development guideline of 200 new houses for Broseley is likely to be achieved and I have no information to suggest that existing sites with planning permission will not be delivered. However, the Council's reason for refusal accepts that the appeal site is in a sustainable location, that the proposal would contribute economically and socially by boosting housing supply, and that it would provide limited support for the existing services in the town. I agree with those conclusions and accordingly consider that the proposal would be a sustainable form of housing development of the type envisaged by Policy MD3 and, having regard to part 2 of the policy, that the addition of 12 dwellings to the supply of housing in Broseley would not result in any harm to the Council's overall spatial strategy. For reasons set out below I also consider that the proposal would not result in any other harm and would bring positive benefits in terms of opening up land for employment use.

13. I accept that part of the site is outside of the settlement boundary and that Policy MD3 does not give unqualified support for windfall sites in the open countryside but I do not think that the words "*having regard to*" should be taken to mean that a proposal must be in full compliance with other policies of the Plan. This part of the MD3, in my view, requires the decision maker to give consideration to the degree of consistency or conflict that the proposal would have with other relevant policies.
14. In this case, that part of the proposal relating to land outside of the development boundary derives support from Core Strategy Policy CS5 but conflicts with Policy MD7a. The other part of the proposed housing site falls within the SAMDev site reference ELR017 which is allocated for employment development under Policy S4.1. Although there is nothing in the wording of that policy that would preclude an alternative use, the development would potentially result in a smaller area of the allocated site being available for employment development; it would therefore conflict with the objectives of S4.1 in that regard. In light of this conflict and the lack of compliance with Policy MD7a I conclude that the proposal would give rise to some degree of conflict with MD3 and the development plan.

Loss of employment land.

15. SAMDev Policy 4.1 states that the allocated employment site extends to 1.3 hectare (ha), although the Broseley Town Plan shows a slightly smaller area. The appellant had some discussions with Broseley Town Council regarding the smaller area of land but no agreement exists between the appellant as landowner and the Council concerning the allocation of this land for employment use. The allocation includes the farm house and outbuildings at the Dunge Farm notwithstanding that the appellant has previously advised that these properties are not available for redevelopment. In addition, the evidence that the Council has granted permission for the conversion of the various outbuildings for residential use would seem to represent an acceptance that this part of the allocation will not be made available for employment use. The presence of existing and proposed residential uses on that land would require that a landscape buffer be provided to the employment site so as to protect the living conditions of existing and future residents.
16. Taking account of the exclusion of those properties and their curtilages, the requirement for a landscape buffer, and the development constraints imposed by the pylons and overhead cables within the site, the developable area of the employment site allocation is likely to be significantly less than 1.3 ha. I accept that the residual area might still be larger than the 0.46 ha proposed in the appeal scheme but, given that the employment component of the appeal proposal would be provided with an access road and services up to the site boundary, the net loss in developable area would be relatively small. Very little, if any, harm would therefore be caused in terms of the likely scale of employment development that could be achieved on the site.

Serviced access to proposed employment land

17. I agree with the appellant that the proposed employment allocation is likely to be in competition with established employment sites in Telford and the proposed new Business Park in Bridgnorth. The appellant also argues that

employment development alone would not fund the construction of the necessary access road and service connections for the development of the allocated site. No financial information has been submitted in support of that claim. However, given the requirement for the construction of a new road junction and of a serviced access road of over 50 metres in length with no frontage development, I consider the appellant's claim to be well founded. I accept that the allocation has only recently been confirmed via the adoption of SAMDev. However, based on my experience of such development proposals, and in the absence of any evidence as to the demand for or viability of a development as envisaged by the Council, I find that these challenges to the delivery of the employment allocation are unlikely to be overcome without cross subsidy such as that which the appeal proposal would provide.

18. The removal of the need to fund the access road would be likely to have a significant positive effect in terms of the viability of developing office or light industrial units on the employment land. The early construction of the site access in tandem with the residential component of the development would also increase the visibility of the employment site to potential users. I consider that these measures would be of considerable advantage in assisting the Council to bring new employment opportunities to the town at the earliest possible opportunity.
19. Subject to the provision of the access road and services being secured by means of a planning obligation, as proposed by the appellant, I find that the benefits associated with the provision of a serviced employment site of the size proposed are material considerations of substantial weight. The development would help boost the supply of housing within Broseley and support its role as a Key Centre and would provide social and community benefits through the inclusion of an element of affordable housing. The proposal would also have substantial economic benefits in terms of assisting the delivery of employment development, the employment created during the construction period, and the expenditure by future occupiers of the proposed dwellings in local shops and services.
20. In my view these benefits are more than sufficient to outweigh the limited conflict with the development plan that I have identified. In light of these benefits, the site's sustainable location, and the absence of any material harm to the countryside, the proposal would constitute sustainable development having regard to paragraph 7 of the Framework. This also weighs heavily in favour of a grant of permission.

S106 Planning Obligation

21. Paragraph 204 of the Framework and Regulation 122 of the Community Infrastructure Levy (CIL) Regulations require that planning obligations should only be sought, and weight attached to their provisions, where they are: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
22. A signed and completed Unilateral Undertaking (UU) has been submitted by the appellant which includes obligations relating to affordable housing provision, the provision and future maintenance of the proposed public open space, and

the construction of a serviced access road to the employment site within the appeal scheme.

23. As the proposal is for more than 10 dwellings it would generate a requirement for affordable housing provision. The UU obligation requires that the appellant provide this through a combination of on-site provision and financial contributions to off-site provision in line with the prevailing target rate for the provision of such housing which is in place at time of the submission of the last reserved matters for housing. This provision would meet the Council's policy requirements.
24. The scheme would also generate a requirement for open space provision in accordance with the Council's normal planning standards. The obligations set out in the UU deal satisfactorily with this matter by setting out a requirement for prior approval of the locations and areas of the public open space within the development and the means by which the land would be transferred either to the Town Council or a Management Company to secure its future maintenance. As set out in the reasons for my decision, the provision of a serviced access to the proposed employment site is a key benefit of the proposal and is critical to its acceptability in planning terms. The provisions within the UU require this infrastructure to be constructed and completed in tandem with the construction of that part of the road which serves the residential component of the development and would secure that key objective.
25. Having regard to the matters set out above, I am satisfied that the obligations contained within the UU are necessary and directly related to the appeal proposal and are fairly and reasonably related in scale and kind to the development proposed, in accordance with CIL Regulation 122. I have therefore attached significant weight to the UU in reaching my decision.

Conditions

26. I have had regard to the draft conditions put forward by the Council and have amended these as appropriate to ensure that they reflect a grant of permission for residential and employment use and provide for a high standard of development.
27. As the proposal is in outline form conditions are needed to require that approval is sought for all reserved matters by means of subsequent applications to the local planning authority and to confirm that the permission does not give approval to any of the details shown in the illustrative plans that accompanied the application. In view of the importance of the employment component to the overall acceptability of the appeal proposal a condition is needed to require that the reserved matters application(s) should include land for employment uses of a minimum size of 0.46 hectares as indicated on the illustrative site layout plan. A condition is also required to limit the use of any building erected for employment use to uses within the B1 use class in line with the SAMDev employment allocation and in view of the presence of residential properties close to the site. A condition has also been added requiring that the access details provide for a new length of pavement on Avenue Road in the interests of the safety of pedestrians going to and from the development.

28. Conditions are needed to set out the full details required within the reserved matters application(s) for landscaping and the requirements with regard to the implementation of those works. These are needed to ensure an appropriate standard of landscape treatment which incorporates the retention of existing trees and the protection and enhancement of the site's ecology. A condition is also needed to ensure that the type and location of the affordable housing element of the development is set out in the reserved matters application(s) relating to layout.
29. A condition has been attached which requires the approval of details of traffic management works along Avenue Road prior to the commencement of development in order to ensure the continued safe operation of that major route. Conditions requiring approval of a Tree Protection Plan and Arboricultural Method Statement, and that any necessary works to the trees are carried out prior to any other construction works, are needed in order to ensure the protection of the TPO and other trees to be retained. The location of the site adjacent to a major local route and close to nearby housing requires that a condition be attached concerning the submission and approval of a Construction Method Statement to ensure that the works do not have any significant adverse effects on the safe operation of the road network or on the living conditions of nearby residents. In the interests of protecting amenity of residents of nearby houses I have also attached a condition to restrict the hours in which construction works can take place at the site.
30. The information available with regard to past mining in the area requires that conditions be attached setting out the need for site investigations and the actions to be taken if those investigations identify the need for any remedial works; these conditions are necessary to ensure that the development is carried out in a safe manner. For this same reason a condition requiring the submission and approval of a scheme of foul and surface water drainage is also needed. I have also attached a condition which requires that a soakaway test be carried out prior to the commencement of works.
31. In view of the potential archaeological interest in the site and its surrounding a condition is needed which requires a programme of investigation works to be undertaken prior to the commencement of development. Finally, in view of the location of the site and the information submitted in respect of the likely presence of bats a condition is needed requiring the approval of a lighting scheme for the site before any such works are carried out.

Other Matters

32. Some third party concerns were raised about possible disturbance from employment development close to houses on Pound Lane. As the proposal is in outline form the existence of residential properties on Pound Lane would need to be taken into consideration at the reserved matters stage but my observations of the relationship of the site to nearby residential properties suggest that any risks of noise or disturbance could be minimised with an appropriate layout for the employment development.
33. Some parties have objected on highway and traffic grounds; however, the local highway authority has indicated that an access from Avenue Road is acceptable in principle and nothing I saw on my site visit would lead to me a different

conclusion. Again although only in outline at this stage, the indicative plans show that most of the trees around the boundaries of the site would be retained. With the protection afforded to many of these by the TPO and through the conditions attached to this decision I consider that concerns about significant harm to such trees are unfounded.

Conclusions

34. For the reasons set out above, and having regard to all matters raised, I conclude that the appeal should be allowed.

Paul Singleton

INSPECTOR

Schedule of conditions attached to Appeal Ref APP L3245/W/16/3147519

- 1) Approval of the details of the appearance, means of access, landscaping of the site, layout and scale of the development (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins 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 before the expiration of three years from the date of this permission.
- 3) The development hereby permitted shall be begun before the expiration of two years from the date of approval of the last of the reserved matters to be approved.
- 4) Nothing in this permission shall be construed as giving approval to the details shown on the plans accompanying this application.
- 5) The application(s) for reserved matters relating to the layout of the development shall provide for a minimum of 0.46ha of employment land in the general location indicated in the illustrative layout plan No SA165966/02/02A.
- 6) Any building constructed under this permission for employment use shall be used only for uses within Class B1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification.
- 7) The applications(s) for reserved matters relating to access shall include the provision of a 2.0 metre wide footway on the south side of Avenue Road, extending from the location of the new access junction north to the site boundary. The footpath shall be constructed in accordance with the approved details and shall be available for use before any of the dwellings or employment units hereby approved are first occupied.
- 8) The first submission of reserved matters shall include a scheme of landscaping and follow the recommendations given in the Turnstone Ecology (2014) report. The submitted scheme shall include:
 - i) Planting plans, including wildlife habitat and features and the landscape buffers to the boundaries of the proposed employment development;
 - ii) Written specifications (including cultivation and other operations associated with plant, grass and wildlife habitat establishment and the removal of invasive species);
 - iii) Schedules of plants, noting species (including scientific names), planting sizes and proposed numbers/densities where appropriate. Native species used to be of local provenance (Shropshire or surrounding counties);
 - iv) Details of trees and hedgerows to be retained and measures to protect these from damage during and after construction works; and

- v) Details of the location and design of 5 bat boxes or bricks suitable for nursery or summer roosting for small crevice dwelling bat species.
- 9) All hard and soft landscape works shall be carried out in accordance with the approved details and to a reasonable standard in accordance with the relevant recommendations of appropriate British Standard 4428:1989. The works shall be carried out prior to the occupation of any part of the development or in accordance with the timetable agreed with the local planning authority. Any trees or plants that, within a period of five years after planting, are removed die or become, in the opinion of the local planning authority, seriously damaged or defective, shall be replaced with others of species, size and number as originally approved, by the end of the first available planting season.
- 10) The application(s) for reserved matters relating to layout shall specify the location of the proposed affordable housing units in accordance with the on site provision set out in the Section 106 obligation. No development shall commence until the location of affordable housing has been approved in writing by the local planning authority.
- 11) Prior to the commencement of development full engineering details of traffic management measures to be provided/modified along Avenue Road shall be submitted to and approved in writing by the local planning authority. The traffic management measures shall be implemented fully in accordance with the approved details prior to any part of the development being occupied or brought into use.
- 12) Prior to commencement of development, a Tree Protection Plan (TPP) and Arboricultural Method Statement (AMS) shall be submitted to and approved in writing by the local planning authority. The TPP shall be based upon a scaled final layout drawing and accurately plot the canopy spread and Root Protection Area (RPA) of trees and hedges on and adjacent the site, clearly showing those to be removed and those to be retained. It shall describe any tree works required to facilitate the development and show the location and specification of the tree protection barrier and / or other measures to be taken to protect retained trees and hedges from damage during development. The AMS shall describe how any works within, or that could affect, the RPA of retained or adjacent trees and hedges shall be designed, implemented and monitored so as to avoid causing damage or harm to those retained or adjacent trees and hedges.
- 13) The tree works shall be carried out and the tree protection measures installed prior to the commencement of any construction works, in accordance with the approved TPP. Thereafter, the tree protection measures shall be maintained in a satisfactory condition throughout the duration of the development and shall not be moved or removed, even temporarily, without the prior permission of the local planning authority. The development shall be implemented strictly in accordance with the approved AMS.
- 14) No development shall take place, including any works of demolition, until a Construction Method Statement has been 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 together with routing of vehicles to and from the site;
- iii) the storage of plant and materials used in constructing the development;
- iv) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- 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;

The approved Statement shall be adhered to throughout the construction period.

- 15) Demolition or construction works shall not take place outside the following times:

Monday to Friday 07:30hrs to 18:00hrs,

Saturday 08:00hrs to 13:00hrs,

Nor at any time on Sundays, bank or public holidays

- 16) Prior to commencement of any works on site, the following information shall be submitted to and approved by the local planning authority:

- i) The submission of a scheme of intrusive site investigations for the mine entry for approval;
- ii) The submission of a scheme of intrusive site investigations for the shallow coal workings for approval;
- iii) A plan detailing the timetable and methods of undertaking of both of the schemes of intrusive site investigations;

- 17) In the event that the site investigations confirm the need for remedial works to treat the mine entry and areas of shallow coal mine workings to ensure the safety and stability of the proposed development, the following information should be submitted to and approved in writing by the local planning authority, or confirmation that such details are not required should be obtained in writing from the local planning authority:

- i) The submission of a report of findings arising from both of the intrusive site investigations;
- ii) The submission of a layout plan which identifies an appropriate zone of influence for the mine entry on site, and the definition of a suitable 'no-build' zone;
- iii) The submission of a scheme of treatment for the mine entry on site for approval
- iv) The submission of a scheme of remedial works for the shallow coal workings for approval;

- v) The remedial works shall be carried out in accordance with the approved details prior to the commencement of any development on site.
- 18) No development shall take place until a scheme of foul drainage, and surface water drainage has been submitted to and approved in writing by the local planning authority. The approved scheme shall be fully implemented before any part of the development is occupied/brought into use (whichever is the sooner). Such a scheme shall include details of how the site meets the requirements of Shropshire Council's Surface Water Management: Interim Guidance for Developers paragraphs 7.10 to 7.12, where exceedance flows up to the 1 in 100 years plus climate change should not result in the surface water flooding of more vulnerable areas within the development site or contribute to surface water flooding of any area outside of the development site.
- 19) Prior to the commencement of any drainage works a soakaway test shall be carried out in accordance with BRE Digest 365, or such other guidance as may be agreed in writing by the local planning authority, and the agreed recommendations shall be implemented in full prior to the first occupation/use of any part of the development (whichever is sooner).
- 20) No development approved by this permission shall commence until a programme of archaeological investigation has been carried out in accordance with a written scheme of investigation which shall have been submitted to and approved in writing by the local planning authority prior to the commencement of any investigation works.
- 21) Prior to the erection of any external lighting on the site a lighting plan shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and thereafter retained for the lifetime of the development. The submitted scheme shall be designed to take into account the advice on lighting set out in the Bat Conservation Trust booklet Bats and Lighting in the UK.