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## Appeal Decision

Site visit made on 27 October 2020

**by L Page BSc (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 20<sup>th</sup> November 2020**

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### **Appeal Ref: APP/H1840/W/20/3255350**

### **Land at Church Lane, Whittington WR5 2RQ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr K Wylde against the decision of Wychavon District Council.
  - The application Ref 19/02767/FUL, dated 24 December 2019, was refused by notice dated 9 March 2020.
  - The development proposed is erection of 2 no. dwellings, improvement to access existing & 1 new access.
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### **Decision**

1. The appeal is allowed and planning permission is granted for the erection of 2 no. dwellings, improvement to access existing & 1 new access on land at Church Lane, Whittington WR5 2RQ in accordance with the terms of the application, Ref 19/02767/FUL, dated 24 December 2019, and the plans submitted with it, subject to conditions in the attached Schedule.

### **Main Issue**

2. The main issue is whether the proposal is in an acceptable location with regards the development strategy for the area.

### **Reasons**

3. The National Planning Policy Framework (the Framework) sets out under Paragraph 61 that the size, type and tenure of housing needed for different groups in the community should be assessed and reflected in planning policies. This includes those who wish to commission or build their own homes. Footnote 26 sets out that Council's should give enough suitable development permissions to meet the identified demand for such house building, in accordance with the requirements of the Self Build and Custom Housebuilding Act 2015 (as amended).
4. To this end, the appellant has supplied empirical evidence showing that demand derived from the total number of people on the register is outstripping supply by around 50%. However, the Council has also supplied empirical evidence showing that when considering the first and second base periods more specifically, the picture becomes nuanced and that supply is closer to demand. The Council has acknowledged that for the second base period, there is still a significant undersupply. Consequently, and notwithstanding the existence of a five year housing land supply more generally, the significant undersupply of self-build housing in the second base period carries substantial weight in favour of the proposal in helping to meet statutory requirements.

5. The self-build nature of the proposal has been appropriately secured by the executed Unilateral Undertaking (UU) submitted by the appellant. I have considered the UU against the three tests set out in the Framework and Regulation 122(2) of the Community Infrastructure Levy Regulations 2010. It is considered necessary to control the use of the land pursuant to delivering self-build housing, which accords with policy objectives of the Framework by securing more housing of this type to address demand. Consequently, it would directly relate to the development; fairly and reasonably in scale and kind.
6. The South Worcestershire Development Plan 2016 (SWDP) is part of the adopted development plan for the area. In accordance with the Policies Map associated with the SWDP, it is clear that the site lies beyond defined development boundaries. Accordingly, the site is located within the countryside and Policy SWDP2 states that the development of dwellings in such locations will be strictly controlled. Exceptions to these strict controls include dwellings for rural workers, employment development in rural areas, affordable housing rural exception sites, buildings for agriculture and forestry, replacement dwellings, house extensions, replacement buildings and renewable energy projects and development specifically permitted by other SWDP policies.
7. The SWDP does not treat self-build housing as an exception for the purposes of controlling development in the countryside. The SWDP also designates the area as a significant gap, which serves as a buffer or visual break between rural settlements and adjacent urban areas. However, when viewed on the ground and despite being an open field, the character and appearance of the site's immediate context belies the fact it is in the countryside. There is extensive development within the immediate vicinity of the site and when walking its perimeter during my visit it did not present itself as a countryside location; it did not have an undeveloped rural character or appearance.
8. The wider area has clearly become developed to an extent whereby the role of the significant gap has diminished considerably. This is in essence what has been found within the South Worcestershire Development Plan Review Preferred Options 2019, with the significant gap recommended for removal. Even though the emerging development plan is at pre examination stage and carries limited weight, it is clear that the situation on the ground is a material consideration that overtakes and reduces the effectiveness of the significant gap as an existing policy tool, limiting harm derived from conflict with it.
9. In light of this and considering the limited scale of the proposal and the potential for sensitive landscaping measures to further reduce any effects on the character and appearance of the area, any harm from conflict with policies in the development plan would be limited. Paragraph 2 of the Framework affirms that planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise.
10. Overall, the proposal would not be in an appropriate location, conflicting with Policies SWDP1, SWDP2 and SWDP21 of the SWDP, as these policies seek to protect the countryside and significant gaps from urbanising development. However, I have identified an undersupply of self-build housing, and the policy objectives under Paragraph 61 of Framework, as a material consideration carrying substantial weight in favour of the proposal that outweighs the limited harm from conflict with the development plan in this particular case.

## Conditions

11. The Council suggested nine conditions and the appellant suggested amendments, including to drawing references, access details, and additional conditions in accordance with another appeal decision. I have considered these against the Framework and Planning Practice Guidance. Some of the conditions relating to access and archaeology were combined to avoid duplication and, more generally, conditions were subject to minor amendments in the interests of consistency, clarity and running order. The appellant referred to a condition for biodiversity enhancement and net gain. To ensure there is a baseline for net gain, a condition securing a construction environmental management plan is also necessary in tandem. All conditions in the attached Schedule are necessary to make the development acceptable in planning terms.
12. The standard conditions setting out the time limits, and securing compliance with the approved plans, are necessary to provide certainty. A condition controlling the implementation of the water management strategy are necessary to ensure the development is appropriately drained upon occupation, to avoid uncontrolled surface water runoff and effects on the water environment therein. A condition requiring the access for each dwelling to be completed prior to occupation, along with conditions for parking, turning and visibility splays are necessary to ensure occupants can enter and exit the development safely. A condition requiring further noise assessment, and mitigation measures, is necessary because of the proximity to a major trunk road and the potential effects of noise on living conditions that this could generate. Conditions for cycle storage and electric vehicle charging are necessary to promote alternative modes of sustainable transport.
13. The PPG is clear that pre-commencement conditions should only be used where clearly justified, likely meaning requirements of the condition are fundamental to the development permitted and it would otherwise be necessary to refuse permission. It is necessary to secure construction and environmental management plans, and other schemes of investigation, before development commences to ensure that areas of sensitive archaeological or ecological importance are appropriately managed and protected from harm during construction, and that living conditions of neighbouring occupiers and highway safety is also protected. It is necessary to secure biodiversity enhancement measures before development commences to ensure opportunities for enhancement come forward in a logical manner in tandem with construction.
14. In accordance with the procedural requirements set out in the Town and Country Planning (Pre-commencement Conditions) Regulations 2018 (as amended), pursuant to Paragraph 3 (b), the appellant has provided a substantive response, confirming that they are happy with the pre-commencement conditions and underpinning reasons provided by the Council in the event they were attached under the appeal.

## Conclusion

15. For the reasons given, the appeal is allowed, and planning permission is granted subject to conditions in the attached Schedule.

*Liam Page*

INSPECTOR

### **Schedule of Conditions**

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
- 2) Unless where required or allowed by other conditions attached to this permission, the development hereby approved shall be carried out in accordance with the information provided on the application forms and the following plans/drawings/documents –
  - a. JJ/2019-09/02 revision B
  - b. JJ/2019-09/03
  - c. JJ/2019-09/04
  - d. JJ/2019-09/05
  - e. JJ/2019-09/06
  - f. JJ/2019-09/07
  - g. 651-0102
  - h. MG1659\_S1
  - i. 1979/1
  - j. B19096.101
- 3) The development hereby approved shall not commence until a Construction Management Plan (CMP) has been submitted to and approved in writing by the local planning authority. As a minimum this shall include: -
  - a. Measures to ensure that vehicles leaving the site do not deposit mud or other detritus on the public highway;
  - b. Details of site operative parking areas, material storage areas and the location of site operatives' facilities (offices, toilets etc);
  - c. The hours that delivery vehicles will be permitted to arrive and depart, and arrangements for unloading and manoeuvre
  - d. Details of any temporary construction accesses and their reinstatement.

The CMP shall be implemented in accordance with the approved details throughout the construction period.

- 4) The development hereby approved shall not commence until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. As a minimum this shall include:
  - a. Risk assessment of potentially damaging construction activities;
  - b. Identification of "biodiversity protection zones";
  - c. Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements and should include details of appropriate protective fencing of retained trees' root protection zone);
  - d. The location and timing of sensitive works to avoid harm to biodiversity features;
  - e. The times during construction when specialist ecologists need to be present;

- f. Responsible persons and lines of communication;
- g. The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person;
- h. Use of protective fences, exclusion barriers and warning signs.

The CEMP shall be implemented in accordance with the approved details throughout the construction period.

- 5) The development hereby approved shall not commence until a Biodiversity Enhancement Strategy (BES) has been submitted to and approved in writing by the local planning authority. As a minimum this shall include:
- a. Purpose and conservation objectives for the proposed works;
  - b. Review of site potential and constraints;
  - c. Detailed designs and working methods to achieve stated objectives (including, where relevant, type and source of materials to be used);
  - d. Extent and location of proposed works shown on appropriate scale maps and plans;
  - e. Timetable for implementation, demonstrating that works are aligned with the proposed phasing of development;
  - f. Persons responsible for implementing the works;
  - g. Initial aftercare;
  - h. Details for disposal of any wastes arising from works.

The BES shall be implemented in accordance with the approved details and all features retained thereafter. On completion of the ecological mitigation and enhancement works, a statement of compliance shall be submitted to the local planning authority by the Ecological Clerk of Works (or similarly competent person) confirming that specified and consented measures have been implemented.

- 6) The development hereby approved shall not commence until a programme of archaeological work, including a Written Scheme of Investigation (WSI), has been submitted to and approved in writing by the local planning authority. The scheme shall include an assessment of significance and research questions; and as a minimum:
- a. The programme and methodology of site investigation and recording.
  - b. The programme for post investigation assessment.
  - c. Provision to be made for analysis of the site investigation and recording.
  - d. Provision to be made for publication and dissemination of the analysis and records of the site investigation.
  - e. Provision to be made for archive deposition of the analysis and records of the site investigation.
  - f. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

The WSI shall be implemented in accordance with the approved details throughout the construction period.

- 7) The development hereby approved shall not be occupied until a noise assessment has been undertaken in accordance with British Standards and submitted to and approved in writing by the local planning authority. Any noise mitigation measures identified by the noise assessment shall be implemented in accordance with the approved details before the development is occupied and retained thereafter.
- 8) The development hereby approved shall not be occupied until an area has been provided for sheltered and secure parking of bicycles (insofar as it relates to each dwelling) in accordance with council cycle parking standards and details which shall be submitted to and approved in writing by the local planning authority. The cycle parking shall be implemented in accordance with the approved details and retained for the parking of bicycles thereafter.
- 9) The development hereby approved shall not be occupied until an area has been laid for the parking of cars (insofar as it relates to each dwelling) and the charging of electric vehicles in accordance with council car parking standards and details submitted to and approved in writing by the local planning authority. The car parking shall be implemented in accordance with the approved details and retained for the parking of cars thereafter.
- 10) The development hereby approved shall not be occupied until the visibility splays shown on drawing JJ/2019-09/02 revision B (insofar as they relate to each dwelling) have been provided. The splays shall at all times be maintained free of level obstruction exceeding a height of 0.6m above adjacent carriageway.
- 11) The development hereby approved shall not be occupied until the accesses and turning areas shown on drawing JJ/2019-09/02 revision B (insofar as they relate to each dwelling) have been implemented. These areas shall be retained for their intended use thereafter.
- 12) The development hereby approved shall not be occupied until the details set out in the submitted Water Management Statement have been implemented. Such details as implemented shall be retained thereafter.
- 13) The development hereby approved shall not be occupied until a Landscape and Ecological Management Plan (LEMP) has been submitted to and approved in writing by the local planning authority. As a minimum this shall include:
  - a. Description and evaluation of the features to be managed;
  - b. Ecological trends and constraints on site that might influence management.
  - c. Aims and objectives of management;
  - d. Appropriate management options for achieving aims and objectives;
  - e. Prescriptions for management actions;
  - f. Preparation of a work schedule, including an annual work plan capable of being rolled forward over a five-year period and longer term thereafter;

- g. Details of the body or organisation responsible for implementation of the plan;
- h. Ongoing monitoring and remedial measures.

The LEMP shall also set out how contingencies and/or remedial action will be identified, agreed and implemented where the results of the monitoring show that conservation aims and objectives of the LEMP are not being met, so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The LEMP shall be implemented as approved.

**End of Schedule**