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## Appeal Decision

Site visit made on 21 November 2017

**by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC**

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

**Decision date: 12<sup>th</sup> December 2017**

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**Appeal Ref: APP/H1840/W/17/3178753**

**Reardene, Cleeve Road, Middle Littleton WR11 8JR**

- 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 Mrs D Fitton against the decision of Wychavon District Council.
  - The application Ref 17/00434/OUT, dated 27 February 2017, was refused by notice dated 5 May 2017.
  - The development proposed is the demolition of existing buildings and dwelling and erection of five dwellings.
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### Decision

1. The appeal is allowed and planning permission is granted for demolition of existing buildings and dwelling and erection of five dwellings at Reardene, Cleeve Road, Middle Littleton WR11 8JR in accordance with the terms of the application, Ref 17/00434/OUT, dated 27 February 2017, subject to the conditions in the attached schedule.

### Procedural Matters

2. The appeal was originally submitted in outline with all matters reserved, except for access. However, the Council's Officer Report states that an amended application form was submitted on the 21 March 2017 and that this indicated that all matters were to be reserved for subsequent approval. The Council determined the application on this basis and so shall I. The appeal form states that the description of development was altered from that on the application form. However, the only alteration to the description was in relation to access and as this is a reserved matter I have used the description from the application form.
3. The appellant submitted a block plan with the application illustrating how the site could be developed with 5 dwellings. As the application is in outline the appellant is not tied to the detail shown on that plan. As such, I have treated this plan as indicative only and have assessed the application on this basis.
4. I gave both parties the chance to comment on the Judgment<sup>1</sup> of 15 November 2017, concerning the interpretation of the term "isolated homes in the countryside" within paragraph 55 of the National Planning Policy Framework (the Framework).

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<sup>1</sup> Braintree District Council v Secretary of State for Communities and Local Government, Greyread Limited & Granville Developments Limited [2017] EWHC 2743 (Admin)

## **Main Issue**

5. The main issue in this case is whether the site would be a suitable location for five dwellings having regard to the policies of the development plan and the Framework and any other material considerations.

## **Reasons**

### *Background*

6. The site is situated between the settlements of South Littleton and Middle Littleton. The appeal site is 'L' shaped and comprises a collection of buildings and large storage containers that have previously been used for commercial purposes. There is also a recently constructed bungalow on the appeal site. The site is accessed from a track that is bounded by metal palisade fencing. The site wraps around 2 dwellings that front onto Cleeve Road and there is a dwelling, Glenfield, on the opposite side of the access track. To the north and west of the site is a large employment site identified within the evidence as 'Kanes Foods'.
7. There is an extensive planning history on the appeal site. The recently constructed bungalow on the appeal site was granted planning permission in 2013. In 2015 planning permission was granted at appeal<sup>2</sup> for a pair of semi-detached bungalows and in 2016 a further planning permission was granted for a bungalow on the appeal site. Consequently, there is no dispute between the parties that there are extant planning consents for an additional 3 dwellings on the appeal site. I consider that given that the commercial use of the site has ceased that it is highly likely that these permissions would be implemented if I was minded to dismiss this appeal. This constitutes the fallback position and I have attributed considerable weight to it.
8. The Council have also stated that they consider that a replacement dwelling for the existing bungalow would meet the criteria of SWDP Policy SWDP18 and I have no reason to dispute this.

### *Location and accessibility*

9. The development plan includes the South Worcestershire Development Plan (SWDP) adopted February 2016. Policy SWDP 1 sets out the general presumption in favour of sustainable development. Policy SWDP 2 sets out the development strategy and settlement hierarchy.
10. The appellant has stated that South Littleton is identified as a category 2 village and Middle Littleton as a category 3 village in the SWDP. This is not disputed by the Council. Policy SWDP 2 states that such villages are suited to accommodate market and affordable housing. However, there is no dispute between the parties that the site is not within the development boundaries of South or Middle Littleton. Sites outside the development boundaries are to be considered as open countryside where development will be strictly controlled. The development would not fall within one of the categories of development allowed by Part C of Policy SWDP 2 and as such it would be in conflict with this policy.
11. South Littleton as a category 2 village contains a number of services and facilities including a primary school, church, post office and shop. There are also other services and facilities within an easy walking and cycling distance of the site including 'Kanes Foods'. There is a pavement on one side of Cleeve

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<sup>2</sup> APP/H1840/W/15/3026360 – 24 September 2015

- Road that provides access for pedestrians to South and Middle Littleton and the nearest bus stops. The appellant has stated that these bus stops are served by two bus services that provide access to Evesham, Bidford, Alcester and Redditch.
12. Even though Cleeve Road is mainly unlit and it is quite a busy road the distances to the adjacent villages are relatively short. However, the amount of traffic and the lack of lighting would not make it an attractive environment for walking after dark nor for cycling especially for more vulnerable groups of road users such as children. Nevertheless, there would be options other than the private car available to future residents to access services, facilities and employment opportunities. Consequently, I have no reason to disagree with the previous Inspector's findings that the site is a relatively accessible location.
  13. In addition I am mindful of the fallback position and when taken together with the existing/replacement dwelling the proposal would only effectively increase the permitted dwellings on this site by one. Therefore, traffic generation and greenhouse gas emissions attributed to this increase would be limited.
  14. Paragraph 55 of the Framework advises that to promote sustainable development in rural areas, housing should be located where it would enhance or maintain the vitality of rural communities and that (with certain identified exceptions) local planning authorities should avoid new isolated homes in the countryside.
  15. The judge in the recent judgement<sup>3</sup> has stated that paragraph 55 of the Framework *'cannot be read as a policy against development in settlements without facilities and services since it expressly recognises that development in a small village may enhance and maintain services in a neighbouring village, as people travel to use them'*.
  16. She also states that the immediate context is the distinction in paragraph 55 *'between "rural communities", "settlements" and "villages" on the one hand, and "the countryside" on the other. This suggests that "isolated homes in the countryside" are not in communities and settlements and so the distinction between the two is primarily spatial/physical'*. As the site is adjacent to existing dwellings and the large employment site I do not consider that it is in an isolated location. The future occupiers of the dwellings would utilise and help to maintain the vitality of the services in the adjacent villages.
  17. The overall site has been used for commercial and residential uses and contains numerous buildings and structures. The part of the site that fronts Cleeve Road is mainly grassed and landscaped but there are timber buildings adjacent to the boundary with the adjacent dwelling, Middle Dene that extend into this part of the site. The appellant has stated that these buildings were used as in connection with the commercial use.
  18. There is dispute between the parties as to whether the whole site is previously developed land. The glossary to the Framework states that previously developed land is defined as *'land which is or was occupied by a permanent structure, including the curtilage of the developed land (although it should not be assumed that the whole of the curtilage should be developed) and any associated fixed surface infrastructure'*. Even though the grassed and landscaped area of the site appears to have had little use in connection with the commercial uses it has wooden buildings on it and visually there is little to

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<sup>3</sup> Braintree District Council v Secretary of State for Communities and Local Government, Greyread Limited & Granville Developments Limited [2017] EWHC 2743 (Admin)

indicate that it does not form part of the curtilage of the overall site. Consequently, I consider that the whole appeal site can be treated as being previously developed land. I note that the definition states that it should not be assumed that the whole of the curtilage should be developed and I deal with this matter below. Part G of SWDP Policy SWDP 2 encourages the redevelopment of brownfield sites.

*Character and appearance*

19. The area in the vicinity of the appeal site is characterised by dispersed traditional ribbon development. Each dwelling is set within generous landscaped grounds which give an open and spacious feel to the area and there are fields and paddocks between groups of the dwellings and South/Middle Littleton. There is variety in the age and form of the dwellings on Cleeve Road but the predominant feature is the roadside hedges.
20. There is a tall roadside hedge within the appeal site but views of the timber sheds and other commercial structures are possible along the access track and over/through the palisade fencing. The proposal is in outline form and as such the retention of that hedge could be controlled by the Council through the reserved matters.
21. The indicative layout shown on the submitted plan does include a 2-storey house and its front wall is shown in line with Middle Dene. However, as stated above the appellant is not tied to those details and the Council can control the layout of the dwellings through the reserved matters. I acknowledge that due to the size and shape of the site that if all five dwellings were to be positioned on the rear section of the site that the proposal would create a more closely spaced pattern of residential development than that which predominates in the immediate vicinity of the site.
22. The undeveloped grassed and landscaped area adjacent to Cleeve Road positively contributes to the spacious feel of the area. Nonetheless, it has the appearance of a landscaped domestic garden and has some existing buildings on it. It does not provide any significant open views into the surrounding countryside and it has more visual affinity with the adjacent residential development than the nearby fields and paddocks. As this part of the site is between 2 existing dwellings and taking into account the above it would not appreciably erode the existing gap between South and Middle Littleton.
23. Furthermore, the dwelling could be located in line with the dwelling on the opposite side of the track, Glenfield, effectively retaining a generous open area adjacent to the road. Moreover, a reserved matters scheme could be appropriately designed which would be in keeping with the character and appearance of the area. Therefore, a dwelling on this part of the site would not have a detrimental effect on the wider surrounding open countryside.
24. The redevelopment of the rear part of the site would remove all of the commercial buildings and structures. The Council and the previous Inspector considered that removing some of these buildings would enhance the character and appearance of the area. The proposal would enable a comprehensive instead of a piecemeal redevelopment of the site and I consider that, subject to the controls at the reserved matters stage, additional landscaping and boundary treatments would ensure an overall enhancement of this part of the countryside.
25. Consequently, the proposal would accord with SWDP Policies SWDP 21 and SWDP 25 which together, amongst other things, seek development that is

appropriate to and integrates effectively with its surroundings and the character of the landscape setting. It would also accord with part F of SWDP Policy SWDP 2 which states, amongst other things, that development proposals should be of an appropriate scale and type with regard to local landscape character and location.

#### *Other matters*

26. Third parties object to the proposal on a wider basis, including in respect of, loss of privacy, loss of light, highway safety, ownership of the access track, contamination from past uses and impact on protected species. These did not form part of the Council's reasons for refusal and I am satisfied that these matters would not result in a level of harm which would justify dismissal of the appeal.
27. While I understand that my decision will be disappointing for some local residents, the information before me does not lead me to conclude that these other matters, either individually or cumulatively, would be an over-riding issue warranting dismissal of the appeal.

#### *Conditions*

28. I have considered the conditions put forward by the Council against the requirements of the Planning Practice Guidance (PPG) and the Framework. In the interests of conciseness and enforceability the wording of some of the conditions has been amended.
29. Conditions relating to the definition and submission of reserved matters and commencement have been imposed to comply with legislation and in the interests of certainty.
30. I have imposed a condition in the interests of highway safety in relation to a construction method statement as the proposal involves the redevelopment of the whole site which is in close proximity of the highway. To ensure that the risks from land contamination are minimised I have imposed conditions in relation to a risk assessment and remediation. In the interests of energy conservation I have imposed a condition in relation to an Energy Statement. I have imposed a condition in relation to the demolition of the existing bungalow to ensure that it is not retained in addition to the proposed dwellings.
31. I have not imposed a condition in relation to foul drainage matters as they are the subject of separate controls. However, I have imposed a condition of surface water drainage to ensure that the development does not exacerbate flood risk and deals with surface water run-off from the site in a sustainable manner. I have not imposed a condition in relation to boundary treatments as it is unnecessary as it is covered by the reserved matters.
32. The PPG advises that care should be taken when using conditions which prevent any development authorised by the planning permission from beginning until the condition has been complied with. In the case of the pre-commencement conditions, I consider that resolution of the matters specified to be so fundamental to the development that it would otherwise be necessary to refuse the application.

#### **Overall Balance and Conclusion**

33. The Council have stated that they can demonstrate a 5 year supply of housing land (HLS) and this is not disputed by the appellant. In such circumstances, the Framework at paragraph 49 sets out that relevant policies for the supply of housing can be considered up-to-date and paragraph 14 of the Framework sets

out a presumption in favour of sustainable development. For decision taking this means '*approving proposals which accord with the development plan without delay*'. Whilst the Council has a HLS, the Framework does not suggest that this should be treated as a cap or an upper limit. Government policy, as expressed in paragraph 47 of the Framework, is to significantly boost the supply of housing.

34. I have found that the proposal would conflict with Part C of SWDP Policy SWDP 2. In accordance with S38(6) of the Planning and Compensation Act 2004, and as set out in paragraph 12 of the Framework, development which conflicts with the development plan should be refused unless other material considerations indicate otherwise.
35. The Framework at paragraph 7 identifies three dimensions to sustainable development: economic, social and environmental. There would be economic benefits associated with the occupation and construction of the dwellings. Prospective occupiers would provide some support for local services and would help to maintain the vitality of adjacent villages. The proposal would provide 4 additional and one replacement dwelling which would make a modest contribution to housing supply. The development would therefore have some social benefits.
36. I have found that the site is a relatively accessible location and that the overall increase in greenhouse emissions and traffic generation would be limited. I have also found that the proposal would result in the redevelopment of previously developed land and an overall enhancement of the character and appearance of the area. Consequently, the proposal would, when considered as a whole, satisfy the environmental role.
37. Even though the proposal would be in conflict with part C of SWDP Policy SWDP 2 it would meet its objectives of safeguarding and wherever possible enhancing the open countryside and encouraging the effective use and re-use of accessible, available and environmentally acceptable land. As stated above it would also have social and economic benefits. I have also taken into account the fallback position and the previous Inspector's findings which were taken at a time when the SWDP had not been adopted but he gave its relevant policies considerable weight. He stated '*The proposal gains support from Policy SWDP 1. It also satisfies the objectives of Policy SWDP 2 and Policy GD1. Although there is conflict with the detail of these policies, given that the site lies outside a defined settlement boundary, I am satisfied that the matters that weigh in its favour, when taken together, are sufficient to outweigh this conflict*'. I find the line of reasoning in that appeal decision both relevant and persuasive.
38. Consequently, in this case I consider that the material considerations indicate that the decision should be made otherwise than in accordance with the development plan. I conclude that the appeal should be allowed.

*D. Boffin*

INSPECTOR

- Attached Schedule -

## **SCHEDULE OF CONDITIONS**

- 1) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission. The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 2) Details of the access, appearance, landscaping, layout, and scale, (hereinafter called "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.
- 3) No part of the development hereby approved shall commence until a Construction Management Plan to include details of:
  - a. Parking for site operatives and visitors;
  - b. Areas for site operatives' facilities;
  - c. Parking and turning for delivery vehicles;
  - d. Areas for the storage of plant and materials;has been submitted to, and approved in writing by, the Local Planning Authority. The approved plan shall be implemented throughout the construction period.
- 4) No development shall commence until an assessment of the risks posed by any contamination have been submitted to and approved in writing by the local planning authority. This assessment must be undertaken by a suitably qualified contaminated land practitioner, in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), and shall assess any contamination on the site, whether or not it originates on the site.
- 5) No development shall take place where following the risk assessment carried out under Condition No 4 land affected by contamination is found which poses risks identified as unacceptable in the risk assessment, until a detailed remediation scheme shall have been submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the Local Planning Authority before the development is occupied.

- 6) Any contamination that is found during the course of construction of the approved development 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 and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the Local Planning Authority. These approved schemes shall be carried out before the development is resumed or continued.
- 7) An Energy Statement shall be submitted as part of a reserved matters application. It should include details to secure the provision of energy from on-site renewable or low carbon sources, sufficient to replace a minimum of 10% of the predicted energy requirements of the dwelling hereby permitted has been submitted to and approved in writing by the Local Planning Authority. The design features, systems and equipment that comprise the approved scheme shall be fully implemented in accordance with the approved plans and particulars prior to the development first being brought into use and shall thereafter be retained in place and in working order at all times unless otherwise agreed in writing with the Local Planning Authority.
- 8) The development shall not commence until details of surface water drainage systems to serve the development have been submitted to and approved in writing by the Local Planning Authority. The approved drainage works shall be implemented in accordance with the approved details before the first occupation of the development hereby permitted and shall be retained thereafter.
- 9) No part of the development hereby approved shall commence until a timetable for the demolition of the existing bungalow has been submitted to and agreed in writing with the Local Planning Authority. Thereafter, the bungalow shall be demolished and removed from the site in accordance with the agreed timetable.