



Appeal Decision

Inquiry opened on 12 November 2013

Site visit made on 14 November 2013

by Clive Hughes BA (Hons) MA DMS MRTPI

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

Decision date: 10 January 2014

Appeal Ref: APP/J1860/A/13/2200044

Land adjacent to The Crown Public House, Malvern Road, Powick, Worcestershire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Bovis Homes Ltd against Malvern Hills District Council.
 - The application Ref 13/00069/FUL is dated 11 January 2013.
 - The development proposed is a residential development comprising 45 dwellings, including 18 affordable dwellings, with associated new access (via Russell Close) and car parking arrangements and on-site public open space.
 - The inquiry sat for 4 days on 12 to 15 November 2013.
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Decision

1. The appeal is allowed and planning permission is granted for residential development comprising 45 dwellings, including 18 affordable dwellings, with associated new access (via Russell Close) and car parking arrangements and on-site public open space at land adjacent to The Crown Public House, Malvern Road, Powick, Worcestershire in accordance with the terms of the application, Ref 13/00069/FUL dated 11 January 2013 subject to the conditions set out in Annex 1 to this decision.

Procedural matters

2. At its meeting on 20 August 2013 the Council's Northern Area Development Management Committee resolved that had it been in a position to determine the planning application it would have refused it for the following reasons:
 1. *The application has been assessed in accordance with paragraph 14 of the National Planning Policy Framework. The adverse impacts of the proposal, in terms of the proposed design and layout, the amenity of future occupiers of the site, the impact on The Crown Public House, the landscape impact and the visual impact in terms of the loss of the view of the Malvern Hills have been identified and it is considered that these significantly and demonstrably outweigh the benefits of delivering 27 market houses and 18 affordable houses on this site. The proposal does not, therefore, constitute a sustainable form of development.*
 2. *The proposed development would not create a high quality environment for people to live in. A number of key dwellings are poorly related to the street scene and a number of dwellings are detached from the proposed street scenes. The site lacks unity, with the affordable dwellings cramped into the*

north eastern corner of the site being clearly distinguishable from the proposed market housing. The cramped layout of the affordable dwellings in the north eastern corner of the site results in parking spaces being poorly related to the dwellings they serve, and parking forming a dominant feature in the street scene and would be to the detriment of the residential amenity of future occupiers of a number of affordable and one market dwelling. The proposed development would therefore fail to create a positive sense of place or local character and result in a poor environment for a number of the future occupiers. The proposal would therefore fail to comply with Policies DS3 and QL1 of the Malvern Hills District Local Plan, Policy SWDP21 of the emerging South Worcestershire Development Plan and the advice within the National Planning Policy Framework.

3. *Insufficient information has been provided with regard to the impact of the noise generated by the A449 and The Crown Public House on the living conditions of future occupiers of the site. The proposal is therefore contrary to Policies DS3 and QL1 of the Malvern Hills District Local Plan, Policy SWDP21 of the emerging South Worcestershire Development Plan and the advice within the National Planning Policy Framework.*
3. At the meeting, members voted to add added two additional reasons for refusal; the minutes of the meeting state:

The only vehicular access to the site is taken from the base of a residential cul-de-sac, Russell Close. This would increase the number of dwellings served by Russell Close from 32 to 77 dwellings.

The first additional reason for refusal was because the carriageway width in Russell Close failed to comply with the Worcestershire Local Transport Plan 3: Highway Design Guide. The Highway Design Guide requires streets that serve more than 50 dwellings to have a carriageway width of 5.5 metres and footpaths that are 2 metres in width. The carriageway and footpath in Russell Close are only 5 metres and 1.8 metres in width respectively and do not therefore comply with the Highway Design Guide.

The second additional reason for refusal related to the role and function of the cul-de-sac. The Committee were concerned that opening up the cul-de-sac would change the way it functioned and this would be to the detriment of the amenity of the public realm. Specific reference was made to the use of the highway by residents as a communal space where children currently play in relative safety and where existing residents hold street parties from time to time for example and that the space is enjoyed by a large number of residents.

It was agreed that Officers would liaise with the ward members to agree the final wording for the reasons of refusal following the Committee meeting.

4. The Council subsequently decided not to pursue these two additional reasons for refusal and the appellant was notified accordingly. The Rule 6 party, the Byron's Wood Community Group (BWCG) pursued these reasons at the Inquiry.
5. The *Planning Statement of Common Ground* (PSoCG) says that agreement has been reached between the appellants and the Council that the necessary noise mitigation measures can be secured by condition and that the Council is not pursuing its third putative reason for refusal.

6. The PSoCG also says that the Council, in reviewing its case, it is no longer maintaining that the development would have an adverse impact on The Crown Public House.
7. Subsequent to the Committee's resolution, and prior to the exchange of proofs, the appellant submitted amended plans as a response to some of the points raised in the Officers' report. These amended plans show minor alterations to the site layout and to the design of some dwellings. The amendments are relatively minor and include alterations to the siting and the elevations of some units. The PSoCG says that these amendments address the Council's concerns relating to the residential amenity of future occupiers. The amendments are all within the site. The BWCG raised no objections to my consideration of these amended plans and so I do not consider that any interests would be prejudiced by my consideration of them. I have used them for this Decision.
8. There is an error on the site location plan (Drawing No 0093_2_101) submitted with the planning application. The "red line" was incorrectly drawn and omits No 18 Russell Close although the site layout plan shows that this property would need to be demolished to provide the access into the site from Russell Close. This error was spotted before the Inquiry opened. On 30 October all statutory consultees were emailed a copy of the corrected location plan (Drawing No 0093_2_102). On 1 November 2013 all neighbours to the site were informed of the change in the "red line" boundary of the site. Each of the neighbouring properties was delivered a correct plan along with a covering letter explaining the circumstances of the change. The original, incorrect, plan was clearly not an intention to deceive local residents as the site layout plan showed that property be demolished to make way for the development. The description of the development makes it clear that access is from Russell Close. The BWCG raised no objections to my considering this amended plan as part of the appeal scheme. I am satisfied that no interests have been prejudiced by this drafting error. I have based this Decision on the amended plan.
9. A *Landscape Statement of Common Ground* (LSoCG) was submitted at the Inquiry, signed by the appellant and the Council. This sets out the parties' agreement in terms of the impact of the development on landscape character. It also says that these parties agreed that the only views under consideration concerning views to the Malvern Hills are those across the public house car park and from the footway/ highway across the north east corner of the site where it abuts the curtilage of the public house. The BWCG disagreed with the LSoCG as it considered that views from the public house garden and from within a conservatory to the side of the public house were also under consideration. I have taken these additional views into account.

Main Issues

10. Having regard to the PSoCG, the LSoCG, the cases put forward by the appellant, the Council, BWCG and the putative reasons for refusal, the main outstanding issues are:
 - Whether the principle of the release of this land for residential development is justified by housing land supply considerations, taking into account such matters as the presumption in favour of sustainable development;
 - The effect of the proposed development upon the character and appearance of the area (design and layout considerations);

- The effect of the proposed development upon public views of the Malvern Hills;
- The effect of the proposed development upon highway safety in the immediate vicinity of the site; and
- In the overall planning balance, whether any adverse impacts of the development, taken individually or cumulatively, significantly and demonstrably outweigh the benefits

While it is not an issue between the parties, I have also taken into account my duty under section 66(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990* to have special regard to the desirability of preserving the setting of a Grade II listed building, No 17 Malvern Road.

Reasons

Background

11. The appeal site, which is of irregular shape, has an area of about 2.7ha and is in use as grazing land. It adjoins Malvern Road (A449) to the north; The Crown Public House to the east; Byron's Wood housing development to the south; fields to the west; and a short row of houses to the north west. The property next to the site, No 17 Malvern Road, is a Grade II listed building. The Byron's Wood housing is built on the site of the former Powick Mental Hospital. The northern part of the site is relatively flat; it falls away sharply towards the south west. The site is located just outside the settlement boundary of Powick and Collett's Green as set out in the *Malvern Hills District Local Plan*, with the site's southern boundary abutting the settlement boundary.
12. It is proposed to develop the greater part of the site for housing, comprising 45 two-storey mainly detached dwellings. Eighteen of the houses, comprising a pair of semi detached houses and 4 terraces each comprising 4 dwellings, would provide affordable housing. These dwellings are situated in the north east corner of the site, adjacent to the public house. Vehicular access would be from Russell Close, within the Byron's Wood housing development, and there would be additional pedestrian access from Malvern Road. In order to provide the vehicular access it would be necessary to demolish No 18 Russell Close. There would be a series of linked open spaces through the site with the steepest part of the site left undeveloped. This land would be used to provide informal public open space and would include a viewing platform.

Whether the principle of the release of this land for residential development is justified by housing land supply considerations, taking into account such matters as the presumption in favour of sustainable development

13. The Local Plan only deals with housing provision until 2011. The Officer's Report to the Council's Northern Area Development Control Committee (20 August 2013) states that the Council can demonstrate a five-year housing land supply. An Update Sheet, also reported to that Committee, refers to a recent appeal decision in the District in which the Inspector stated "*the Council cannot demonstrate a five-year supply of housing land even with a 5% buffer and with all other considerations on supply going in their favour*". In the light of this, the Update Sheet changes the weight that should be attached to the supply of

- market housing from “moderate” to “significant”. It adds that the weight that should be given to the affordable housing remains “moderate”.
14. The PSoCG acknowledges that the planning authority cannot demonstrate a five-year housing land supply and it states that relevant policies for the supply of housing land should not be considered up to date and that paragraph 49 of the Framework is fully engaged. It adds that the proposed development is housing so that, in accordance with paragraph 49, the presumption in favour of planning permission set out in paragraph 14 of the Framework is to be applied.
 15. I have had regard to the recent High Court judgement in *William Davis Ltd, Jelson Ltd v SoS Communities and Local Government & North West Leicestershire DC* [2013] EWHC 3058 (Admin) that was handed down on 11 October 2013. In particular, paragraph 37 of that judgement says that paragraph 14 of the Framework only applies to a scheme which has been found to be sustainable. It is therefore first necessary to consider whether these proposals comprise a sustainable form of development.
 16. The PSoCG says that significant weight should be given to sustainable development, identified in the document as being one of the benefits of the scheme. The Council added the caveat, however, that this is in terms of supporting village services, moving towards a low carbon economy and jobs in the construction phase. The PSoCG also gives substantial weight to the provision of both market and affordable housing.
 17. Paragraph 7 of the Framework sets out three dimensions to sustainable development: economic, social and environmental. In terms of its economic role, the development would provide both open market and affordable housing, initially bringing jobs in construction and then providing homes whose occupiers would be likely to contribute to the local economy due to their disposable income. Unchallenged evidence, based upon the Experion Retail Planner Data (2012), is that average annual household expenditure within this District, on convenience and comparison goods and on leisure totals over £17,500. The proposed 45 houses could therefore generate almost £800,000 per year for the local economy. This is a significant benefit to the local economy. The Secretary of State has stated that the provision of housing is itself a contributor to economic growth (APP/G1630/A/11/2146206 & 2148635).
 18. Concerning its social role, the development would provide open market and affordable housing in an area where there is an acknowledged shortfall. The Council has accorded substantial weight to this. The development would also provide a significant area of public open space within the site. This would include a viewing platform which would provide a spectacular, and uninterrupted, view of the Malvern Hills. The UU makes provision for a significant financial contribution towards the construction of a sports pavilion, which has a large community room, at the nearby Hamilton Close playing fields. There is currently no community facility in Byron’s Wood. This facility has the benefit of planning permission and the contribution would unlock match funding that would enable it to be built. This would provide a benefit for users of the sports pitches and, potentially, to the community as a facility for meetings and events. I acknowledge that the planning permission is subject to a condition preventing its use after 21.00 hrs in the evening, but this need not prevent it being used by the community at other times.

19. With regard to the environmental role I have no doubt as to the strength of local feeling towards the loss of the farmland and, in particular, the views over it towards the Malvern Hills. The proposed development, if permitted and constructed, would represent the permanent loss of this open land and some views towards the hills. As set out and explained in more detail below, however, the harm arising from the loss of the views of the Malvern Hills would not be so great that it would inevitably trump all the other benefits of the development. In any case, the lost views are not uninterrupted and, for most receptors, are fleeting glimpses rather than clear views.
20. The loss of these views would need to be balanced with the environmental benefits arising from the provision of a large area of public open space and a public viewing platform from which views of the Malvern Hills will be able to be gained. There would also be benefits arising including the provision of managed landscaped areas and SuDS areas to aid biodiversity.
21. I conclude that while there are clear dis-benefits of the proposals in terms of the loss of views, there are overriding considerations that significantly outweigh that loss. These include the provision of market and affordable housing; paragraph 47 of the Framework seeks to boost significantly the supply of housing. Overall, and despite the fact that there would be some environmental harm, the scheme would comprise a sustainable form of development in accordance with the provisions of paragraph 7 of the Framework.
22. Having come to the conclusions that the development plan is out of date in terms of housing provision (a matter that is not in dispute) and that these proposals constitute a sustainable form of development it is necessary to determine this appeal in the light of paragraph 14 of the Framework. This paragraph sets out a general presumption in favour of sustainable development. This says that for decision-making, where the development plan is, amongst other things, out of date, granting permission unless *“any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole”*. It is agreed by the parties that the specific policies referred to in footnote 9 do not apply; my conclusions concerning the impact on a designated heritage asset are set out below.

The effect of the proposed development upon the character and appearance of the area (design and layout considerations)

23. Saved Policy DS3 of the Local Plan says that development will only be permitted where fifteen separate elements are met. The PSoCG says that only element (b) is relevant here. This requires that the layout, scale, massing, density, materials and design respect the character and quality of the area and promote local distinctiveness. Following the receipt of the amended plans, as set out in paragraph 7 (above), which overcome the Council's objections concerning scale, massing, density, materials and design, the Council's only outstanding concern regarding this policy related to the site layout. Saved Policy QL1 relates to the design of new buildings and related development. Criterion (b) requires that development maintains or creates a positive sense of place; criterion (d) requires that development does not adversely affect urban form; criterion (e) (i) covers similar ground to Policy DS3 (b).
24. The Council's expert witness maintained a number of minor criticisms of the proposed site layout and the relationship between some to the houses to one

another and to their car parking spaces. The concerns regarding the ease of refuse storage and collection for some of the affordable housing units is the subject of an agreed condition. The Council's main outstanding objection to the scheme related to the grouping and layout of the affordable housing units (Units 17 to 31). I agree that it is, as a general rule, preferable if different tenures are "pepper potted" throughout the development. However, this is not an essential requirement and their being grouped together is not in conflict with any adopted policy. There is a practical reason for this aspect of the layout; the terraced houses are sited on the flattest part of the site.

25. The layout of the affordable housing is acceptable. While it could undoubtedly be improved by reducing its density, and in particular by widening the gap between units 20 and 27, the resultant layout provides an acceptable courtyard feel to the group of dwellings to the rear (Units 21 to 26). Their car parking arrangements are sufficiently fragmented by landscaping for this not to be unacceptably dominant.
26. Looked at in the round the scheme's layout reflects that of the adjoining Byron's Wood. The detached housing, short culs-de-sac and the provision of plentiful public open space are wholly in keeping with the established character of the area. I also noted that the existing Byron's Wood has a number of separate enclaves of differing characters; the enclave of affordable housing within this scheme would reflect and respect that aspect of the existing estate. Overall, I conclude on this issue that there are no aspects of the proposed development that weigh so significantly against the development as to make it unacceptable. The proposals would not result in undue conflict with Policies DS3 and QL1 of the Local Plan.

The effect of the proposed development upon public views of the Malvern Hills

27. The LSoCG says that there is agreement between the appellant and the Council that in terms of landscape impact, at national and regional level, the impact is negligible and that the local and composite impacts are low. Based upon the written and oral evidence to the Inquiry I agree with that assessment.
28. Concerning views of the Malvern Hills, the LSoCG says that the appellant and the Council agree that the only views under consideration are those across the car park at The Crown Public House and from the vicinity of the north east corner of the site where it adjoins the boundary of the public house. The BWCG identified two further viewpoints; from the seating area in the garden of the public house and from within the seating area inside the conservatory on its western flank. These latter views, while from private ground, are views that can be gained by the general public when visiting the public house.
29. The two views identified in the LSoCG provide the first glimpses of the Malvern Hills for those travelling along Malvern Road from Worcester to Malvern. They were described as being iconic views of the hills; the Council also identified that the views of the hills would announce to drivers that they are nearly home or at their destination. The views would be obtained by drivers, passengers, pedestrians and cyclists who were heading south along the road.
30. Concerning the two views identified in the LSoCG, the Malvern Hills are visible in the background of views across the car park from near the traffic lights at the Malvern Road/ Hospital Lane/ Old Malvern Road junction. This view,

however, is relatively brief. For most drivers waiting at the traffic lights, the vegetation on the southern side of the road restricts views; it is only when across the junction that views of the hills can be achieved. In these views the hills form the backdrop; that backdrop would be lost. However, the foreground of the view is cluttered with fencing, car parking for the public house, recycling bins, light columns, signage and vegetation. These factors all compromise the quality of the view. The view is also relatively brief as, when travelling west, it is soon obscured by further vegetation and the public house itself.

31. Nonetheless, this is the first view of the hills and it would be largely lost by the proposed development. While for many travellers the view is likely to be incidental to the journey between Worcester and Malvern, it would be viewed by a great many drivers, passengers and cyclists. Given the visual importance of the hills and the fact that this is the first view of them when heading south, I consider that the sensitivity of the receptors as a whole would be at least moderate. It would also be clearly visible to those pedestrians waiting at the crossing, especially those heading south, whose sensitivity would be much greater. The loss of this view would be harmful.
32. The view from near the north east corner of the site has a less cluttered foreground and it is across a field which drops away into the distance. However, the view is over the hedge along Malvern Road and the further hedge between the public house garden and the appeal site. From photographs it appears that the hedge along the northern boundary of the appeal site was kept well trimmed but it is now much taller to the extent that it prevents views across the appeal site itself. The remaining view, between this hedge and the public house, is further limited by a sign and a mature tree. The resultant view is highly restricted. For anybody travelling in a motor vehicle along Malvern Road it is no more than a glimpse; even on foot the view is short-lived.
33. Initially it was planned that the linked public open spaces through the proposed development would provide a viewing corridor through to the hills but its orientation is such that no such views would be achieved. The development would block all remaining views of the Malvern Hills from along this road frontage. This would result in some further harm.
34. The two additional views cited by the BWCG are from within the curtilage of the public house. These views would be seen by those visiting the public house as they are from within the garden and from within a conservatory used for eating/ drinking. The public house garden is on different levels and it is only from the upper tier that there are clear views of the hills. At the time of my visit there were five tables/ benches along this tier and from each of these tables there are views of the hills over the hedge. This view would be lost. Within the conservatory there are tables and chairs and at the time of my visit there were diners in this area. There are views of the hills, albeit when seated these views are more restricted. I consider that the views from the garden and the conservatory both make positive contributions to the facilities provided by the public house. Their loss would also be harmful.
35. The views of the Malvern Hills across the public house car park, across the corner of its curtilage and from within its curtilage would all be lost by the development. There are further public views of the hills from Malvern Road a little way to the west; these views are more closely aligned with the direct line of sight for drivers and are not affected by these proposals. Nonetheless, the views that would be lost are iconic views of the Malvern Hills. They are clearly

important locally and provide significant benefits to drivers and other travellers. The A449 is, for example, part of the identified "Elgar Drive" which takes tourists past houses where Elgar lived and other places with "Elgarian associations".

36. In order to mitigate the harm, and to replace the lost views, it is proposed to provide a viewing platform within the appeal site. It would be sited at the top of the south-facing slope and would enjoy uninterrupted views of the Malvern Hills. This would undoubtedly provide benefits for local residents and may well become a local destination. It would only be a short walk from the public house. However, it is not intended that it would replace the views for travellers or be signposted from the main road due to traffic and parking considerations. Current receptors would therefore not be compensated by this platform. Local residents can also gain similar views from the local public footpath network, although these would not have the benefit of any seating.
37. The proposals would result in the loss of important, albeit restricted, views of the Malvern Hills; this is only partly compensated for by the provision of the viewing platform. This carries significant weight against the development.

The effect of the proposed development upon highway safety in the immediate vicinity of the site

38. This matter was not pursued by the Council. The BWCG produced an expert witness who made a number of detailed criticisms of the proposed site access and the layout within the development. These criticisms, however, have to be seen in the light of the fact that neither the local highway authority nor the local planning authority raised any objections to the design or location of the proposed access or the layout of the development. The PSoCG, to which the BWCG was not a signatory, acknowledges that the site access does not meet the standards in the County Council's Highway Design Guide (HDG) but that it is acceptable in the context of the principles advocated by Manual for Streets (MfS). Notwithstanding the limited conflict with the HDG, the County Council's Highway Engineers raised no objections to the development.
39. The site access from Russell Close would be via a staggered crossroads over the two cul-de-sac arms of that road. While this would present a slightly awkward access, due to its configuration driving speeds would be likely to be low. There would be conflict at this junction on the occasions when refuse vehicles or furniture vans met cars but such occurrences are not likely to be so frequent or at such a speed as to be unacceptably hazardous. The overall layout of the development is not significantly different to that of the existing estate which has its own pinch points. The parties agreed that there is no issue with highway capacity.
40. Current Government advice is set out in MfS which advocates a less rigid approach to highway design. The more recent HDG does not follow the MfS approach but even so there is no evidence to demonstrate that the proposed highway arrangements cannot work satisfactorily or that they would result in unacceptable hazards for road users or pedestrians. The difference in road width is only about 0.5m to 0.7m and that of the footway only about 0.2m. There is adequate space for two cars to pass one another and speeds are likely to be low due to the layout of the roads and their junctions. It has not been shown that the reduced road widths would result in unacceptable hazards to road users or pedestrians.

41. Concerning on-street play by children and the use of the roads as communal open space, traffic speeds are low and are likely to remain so. There would be no additional traffic in the two arms of Russell Close which would remain culs-de-sac. In the short west/ east section of Russell Close there would be some additional traffic; even at peak times this would still be less than one vehicle per minute. Forward visibility is good along this short section and traffic would be likely to slow further at the junctions at its western and eastern ends. Government guidance on the design of Home Zone streets indicate that they are capable of carrying up to 100 vehicles per hour. While the roads are not designed for children's play, the traffic levels would be significantly lower than this. In any case, the proposed development has been designed with a significant amount of public open space where safe play can take place.
42. I do not consider that the development would result in unacceptable hazards to road users in the vicinity of the appeal site or result in conflict with paragraph 32 of the Framework.

Effect of the development on a designated heritage asset

43. No 17 Malvern Road is a Grade II listed building; the appeal site wraps around its eastern and southern boundaries. It comprises the eastern half of a pair of semi detached houses that are sited close to the road frontage and that have reasonably deep gardens to the rear. The flank wall of No 17 is sited some distance from the boundary with the appeal site; within this gap is an outbuilding and the boundary is delineated by a hedge and a wire fence. This latter fence is on the field side of the hedge and appears to be designed to prevent sheep escaping from the appeal site. It is not clear from the plans exactly where the common boundary lies; it appears to run down the middle of the hedge. The proposed development includes the provision of an acoustic fence along this boundary.
44. The PSoCG says that there would be no significant impact on the Grade II listed building. The BWCG do not raise any concerns in this regard. Based upon the submitted evidence, on the unchallenged *Statement of Heritage Significance* and on my observations on site, I am satisfied that the level of harm to the setting of the building would be very limited; it would be less than substantial. In such circumstances paragraph 134 of the Framework says that any harm should be weighed against the public benefits of the proposal.

In the overall planning balance, whether any adverse impacts of the development, taken individually or cumulatively, significantly and demonstrably outweigh the benefits

45. As set out above I have concluded that, in the round, these proposals comprise sustainable development when assessed against the three dimensions set out in paragraph 7 of the Framework. Paragraph 14 of the Framework is therefore engaged. This sets out a presumption in favour of sustainable development; it says that planning permission should be granted unless the adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. Paragraph 49 says that housing applications should be considered in the context of that presumption in favour.
46. The identified harm mainly arises from the loss of the views of the Malvern Hills from Malvern Road and from The Crown Public House. This harm carries

significant weight. There is a low impact on the landscape which carries limited weight. There is also some limited harm to the area arising from the layout of the development and some very limited harm to the setting of a Grade II listed building.

47. Against this harm has to be balanced the benefits arising from the provision of both market and affordable housing in an area where there is a shortage of suitable sites and no identified five-year housing land supply. The PSoCG identifies that both the appellant and the Council accords substantial weight to the provision of market housing and the same weight to the provision of affordable housing. Other benefits of the scheme include the provision of a public viewing area which carries some weight, albeit at a local level. Some weight can also be given to the off-site works including the provision of footway/ cycleway improvements and the contribution towards the construction of a community pavilion and to the on-site enhancement of local bio-diversity.
48. Overall, the balance is clearly in favour of the development so the adverse impacts do not significantly and demonstrably outweigh the benefits. The proposals accord with the Framework.

Unilateral Undertaking

49. A UU was submitted by the appellant. This makes provision for eighteen of the dwellings to be affordable housing units, which is defined as being either shared ownership units, social rent units or affordable rent units. The UU also makes financial contributions towards bus stops (£6,000), education (£82,653), footway works (£18,225), open space (£207,000) and the Worcester Transport Strategy (£67,042). It is intended that the open space contribution be used to provide match funding to enable the construction of a pavilion at playing fields off Hamilton Close; this already has the benefit of planning permission and the estimated total costs are around £400,000.
50. The contributions were discussed at the Inquiry. I am satisfied that all the elements are necessary to make the development acceptable in planning terms; are directly and fairly related to the development and are fairly and reasonably related in scale and kind to the development. They conform to the requirements of Regulation 122 of the *Community Infrastructure Levy Regulations 2010* which are re-stated in paragraph 204 of the Framework. I have therefore taken them into account in the determination of this appeal.

Conditions

51. The list of conditions as agreed between the appellant and the Council are set out in the PSoCG. These were discussed at the Inquiry and, subject to a few minor amendments, have been imposed. Conditions concerning external materials, boundary treatments, lighting, levels, landscaping and the protection of trees and hedgerows during the course of construction are necessary in the interests of the appearance of the area and to protect the amenity of nearby residents. A programme of archaeological work is necessary as the *Archaeological Evaluation* identified a small number of archaeological features within the proposed development area.
52. A further site investigation concerning contaminated land is necessary due to the infilled pond on the site and the potential for ground gases from historic infill nearby. The condition is necessary in the interests of the living conditions of future residents. Highway works and road junction arrangements need to be

submitted and constructed to ensure that proper access is provided to the new dwellings and in the interests of highway safety in the vicinity of the site. A Method of Construction Statement and control over the hours of working on site are necessary for the same reasons and to protect the living conditions of nearby residents. Details of cycle storage are required as such details have not been submitted. Garages need to be kept available for the parking of cars in the interests of highway safety. A Travel Plan is necessary to help reduce vehicle movements and promote sustainable access. In order to accommodate electric vehicles in the future suitable facilities need to be provided.

53. Details of refuse storage for Plots 17-24 need to be provided to ensure that satisfactory arrangements are in place and to safeguard the amenity of the area. Details of the viewing area need to be submitted as no such details have been provided. The recommendations of the *Badger Survey Report* need to be implemented to prevent any adverse impacts on this protected species. Details of foul and surface water drainage and the proposed attenuation basin/ balancing pond need to be submitted to ensure that satisfactory arrangements are in place. The recommendations of the submitted *Flood Risk Assessment* need to be implemented to prevent the unacceptable risk of flooding.
54. Due to the potential for future residents to be subject to unacceptable noise from traffic using the nearby Malvern Road and from the adjoining public house, a scheme of sound insulation, ventilation and noise control measures need to be provided. The approved plans have been identified for the avoidance of doubt and in the interests of the proper planning of the area.

Overall conclusions

55. I have taken into account all the matters raised in the written representations and at the Inquiry. The Government is seeking to boost significantly the supply of housing. The Council does not have an up-to-date plan which provides a five-year housing land supply. This sustainable proposal will provide additional housing in an area where there is an identified shortage. The benefits of the proposals clearly outweigh the harm and so the appeal is allowed subject to the conditions set out in Annex A and the provisions of the completed UU.

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Hugh Richards of Counsel

He called
Christopher Partington
BA(Hons) DipArch MArch RIBA
Carly Tinkler CMLI
Sam Silcocks BSc MA MRTPI

Instructed by Head of Legal Services,
Malvern Hills DC

Principal, Zebra Architects Ltd
Landscape Architect and Environmental
Consultant
Senior Planning Officer, Malvern Hills DC

FOR THE APPELLANT:

Anthony Crean QC

He called
Philip Jones MICE CIHT HonFIHE
Malcolm Payne Dipl Arch RIBA
IHBC
Richard Tisdall BSc MLD CMLI
Philip Rawle BSc (Hons) MA
DipTP MRTPI

Instructed by Ms F Brereton, Bovis
Homes Ltd (South West Region)

Principal, Phil Jones Associates
Senior Director, Malcolm Payne Group Ltd
Managing Director, Tisdall Associates Ltd
Director PRP Consultants Ltd

FOR THE BYRON'S WOOD COMMUNITY GROUP:

Scott Stemp of Counsel

He called
Cllr Tom Wells
Richard Brunt BSc(Eng) DipEng
MICE
Chris McSweeney MA(Hons)

Instructed by Byron's Wood Community
Group

Malvern Hills District Councillor and
Worcestershire County Council Councillor
Principal Engineer, Robert West
Consulting Engineers
Local resident

INTERESTED PERSONS:

Keith Smallman	Local resident
Philip Bayliss	Local resident
Andy Lamb	Chairman Parish Council and local resident
Alan Wallcroft	Local resident

DOCUMENTS SUBMITTED AT THE INQUIRY

- 1 Council's notification letter and list of persons notified
- 2 Revised *Landscape Statement of Common Ground*
- 3 Corrected "red line" plan and supporting documents/ neighbour notification details
- 4 Opening submissions on behalf of the appellant
- 5 Opening submissions on behalf of the Council
- 6 Opening submissions on behalf of the Byron's Wood Community Group

- 7 Extract from *Urban Design Compendium* 1 p 41
- 8 Letter dated 28 October 2013 and enclosures from Roger Clews (PINS) to Project Manager, South Worcestershire DP
- 9 Letter dated 8 November 2013 from Project Manager, South Worcestershire DP to Roger Clews (PINS)
- 10 Set of four A3 sheets with photos and plans concerning views of the Malvern Hills from around The Crown Public House and the proposed viewing platform
- 11 Extract from *Guidelines for Landscape and Visual Impact Assessment* pp 44-5
- 12 Draft Unilateral Undertaking from Bovis Homes Limited
- 13 Letter dated 19 September 2013 from Festival Housing to Bovis Homes Ltd
- 14 Email exchange dated 12 September to 12 November 2013 between Philip Rawle and Simon Rea concerning build cost of pavilion
- 15 Plan showing layout of development at Powick Hospital (now Byron's Wood)
- 16 *The Elgar Drive* publicity leaflet published by The Elgar Foundation
- 17 Extract from *Worcestershire Highway Design Guide* pp 15-16
- 18 *Open Space SPD* 2008 – Malvern Hills DC
- 19 Malvern Hills AONB *Guidance on identifying and grading Views and Viewpoints* Appendix 2 and Ordnance Survey Extract showing The Ketch
- 20 Agreed final list of application plans (Annex B)
- 21 Closing submissions on behalf of the Byron's Wood Community Group
- 22 *William Davis Ltd, Jelson Ltd v SoS Communities and Local Government & North West Leicestershire DC* [2013] EWHC 3058 (Admin)
- 23 Closing submissions on behalf of the Council
- 24 Closing submissions on behalf of the appellant

Annex A

Schedule of Conditions (32)

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the approved plans set out in Annex B to this Decision unless otherwise required by conditions attached to this Decision.
- 3) No development shall take place until the external facing and roofing materials to be used in the construction of the development hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 4) No development shall take place until all details of fenestration, including windows and doors, to be used in the construction of the development hereby permitted have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 5) (A) No development shall take place until a programme of archaeological work, including a Written Scheme of Investigation, 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:

1. The programme and methodology of site investigation and recording.
 2. The programme for post investigation assessment.
 3. Provision to be made for analysis of the site investigation and recording.
 4. Provision to be made for publication and dissemination of the analysis and records of site investigation.
 5. Provision to be made for archive deposition of the analysis and records to the site investigation.
 6. Nomination of a competent person or persons/ organisations to undertake the works set out in the Written Scheme of Investigation.
- (B) No demolition/ development shall take place other than in accordance with the Written Scheme of Investigation approved under (A) (above).
- (C) The development shall not be occupied until the site investigation and post investigation assessment has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under (A) (above) and the provision made for analysis, publication and dissemination of results and archive disposition has been secured.

- 6) Unless otherwise agreed by the local planning authority development, other than that required to be carried out as part of an approved scheme of remediation, shall not take place until Parts 1 to 6 have been complied with:

Part 1

A further site investigation must be carried out to further delineate contamination found in the submitted report "*Desk Study and Ground Investigation at Russell Close, Powick, Worcestershire*". The findings of the further assessment, previous assessment and risk assessment shall be detailed in a report supplied to the local planning authority in accordance with DEFRA and the Environment Agency's "*Model Procedures for the Management of Contaminated Land, CLR11*". The report must be approved in writing before any development takes place.

Part 2

Where an unacceptable risk is identified a scheme for detailed site investigation must be submitted to and approved in writing by the local planning authority prior to being undertaken. The scheme must be designed to assess the nature and extent of any contamination and must be led by the findings of the preliminary risk assessment. The investigation and risk assessment must be compiled by competent persons and must be designed in accordance with DEFRA and the Environment Agency's "*Model Procedures for the Management of Contaminated Land, CLR11*".

Part 3

Detailed site investigation and risk assessment must be undertaken and a written report of the findings produced. This report must be approved in writing by the local planning authority prior to any development taking place. The investigation and risk assessment must be undertaken by

competent persons and must be conducted in accordance with DEFRA and the Environment Agency's "*Model Procedures for the Management of Contaminated Land, CLR11*".

Part 4

Where identified as necessary a detailed remediation scheme to bring the site to a condition suitable for the intended use by removing unacceptable risks to identified receptors must be prepared and is subject to the approval of the local planning authority in advance of undertaking. The remediation scheme must ensure that the site will not qualify as Contaminated Land under part 2A Environmental Protection Act 1990 in relation to the intended use of the land after remediation.

Part 5

The approved remediation scheme must be carried out in accordance with its terms prior to the commencement of development, other than that required to carry out remediation, unless otherwise agreed in writing by the local planning authority.

Part 6

Following the completion of the measures identified in the approved remediation scheme a validation report that demonstrates the effectiveness of the remediation carried out must be produced, and is subject to the approval of the local planning authority prior to the occupation of any of the buildings.

Part 7

In the event that contamination is found at any time when carrying out the approved development that was not previously identified it must be reported in writing immediately to the local planning authority. An investigation and risk assessment must be undertaken and where necessary a remediation scheme must be prepared, these will be subject to the approval of the local planning authority. Following the completion of any measures identified in the approved remediation scheme a validation report must be prepared, which is subject to the approval in writing of the local planning authority prior to the occupation of any buildings.

- 7) No development shall take place until the engineering details and specifications of the proposed roads and highway drains have been submitted to and approved in writing by the local planning authority. The development shall not be first occupied until the scheme has been constructed in accordance with the approved drawings.
- 8) No development shall take place until the engineering details of the junction arrangements to serve the site off Russell Close, together with restricted pedestrian/ cycleway access arrangements to the A449, have been submitted to and approved in writing by the local planning authority, and the development shall not be occupied until the scheme has been constructed in accordance with the approved details.
- 9) The development shall not be occupied until the roadworks necessary to provide access to the nearest publicly maintained highway have been completed in accordance with details submitted to and approved in writing by the local planning authority.

- 10) All roadworks shall be completed within a period of two years or other period agreed in writing from the commencement of work on site, or within six calendar months of the substantial completion of 75% of the dwellings (34 no dwellings) hereby approved if sooner. This will entail the making good of surfacing, grassing and landscaping in accordance with a specification submitted to and approved in writing by the local planning authority.
- 11) No development shall take place until a Method of Construction Statement, to include details of
 - a) Parking of vehicles for site personnel, operatives and visitors
 - b) Loading and unloading of plant and materials
 - c) Storage of plant and materials within the site
 - d) Programme of works (including measures for traffic management)
 - e) Provision of boundary hoarding behind any visibility zones
 - f) The provision of wheel cleaning apparatus for site traffic
 - g) Means of vehicular access for construction traffic from Hospital Lane, King Charles Avenue and Russell Close onlyhas been submitted to and approved in writing by the local planning authority. Only the approved details shall be implemented during the construction period.
- 12) Prior to the first occupation of any dwelling hereby approved secure parking for cycles, in accordance with a scheme that has been submitted to and approved in writing by the local planning authority, shall be provided within the curtilage of each dwelling. These facilities shall be retained thereafter for the parking of cycles only.
- 13) No development shall take place until details for the storage of refuse for Plots 17-24 have been submitted to and approved in writing by the local planning authority. The approved details shall be implemented prior to the occupation of these dwelling and shall be retained thereafter.
- 14) No development shall take place until details of the proposed viewing area (including its location) on a plan at a scale of at least 1:500 has been submitted to and approved in writing by the local planning authority. The approved scheme shall be completed prior to the first occupation of the development and shall be retained thereafter.
- 15) No development shall take place until details of all boundary treatments to be erected have been submitted to and approved in writing by the local planning authority. These details shall include a plan (at a minimum scale of 1:500) detailing the position of all proposed boundary treatment and annotated or accompanied by a schedule specifying type, height, composition, colour and appearance of all boundary treatments throughout the site. The approved boundary treatments shall be erected before the development is first brought into use and thereafter retained in that form, notwithstanding the provisions of Schedule 1, Part 2 of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking or re-enacting that Order with or without modification).

- 16) Notwithstanding the provisions the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking or re-enacting that Order with or without modification) no new boundary treatment shall be erected between the dwellings and the highway without the submission and subsequent approval of a separate application for planning permission.
- 17) The garages hereby permitted shall be used solely for the garaging of private vehicles and for purposes incidental to the enjoyment of the dwelling houses as such and not as habitable accommodation or the carrying out of any trades or business.
- 18) No development shall take place until full details of foul and surface water drainage systems has been submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented before the first use of the dwellings hereby permitted and shall be retained thereafter.
- 19) Prior to the commencement of development, full details (including location) of the proposed attenuation basin/ balancing pond and all other SuDS features on the site not considered for adoption as public sewerage, together with management plan and arrangements for future management in perpetuity, shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented before the first use of the buildings hereby permitted and shall be retained thereafter.
- 20) The development hereby approved shall be carried out in accordance with the recommendations set out in the submitted "*Flood Risk Assessment and Drainage Strategy*" dated July 2013.
- 21) Prior to the commencement of development a detailed plan showing the levels of the existing site, the proposed slab levels of the dwellings hereby approved and a datum point outside the site, shall be submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved details.
- 22) Prior to the commencement of development a scheme of landscaping, including details of the disposition of planting, cross referenced to a schedule listing the species, size and number of plant proposed, shall be submitted to and approved in writing by the local planning authority. The approved scheme shall be carried out concurrently with the development and completed to a timeframe that has also been submitted to and agreed in writing by the local planning authority.
- 23) If within a period of five years from the date of the planting of any tree planted pursuant to Condition 22 that tree, or any tree planted in replacement of it, is removed, uprooted or destroyed or dies, or becomes seriously damaged or defective, another tree of the same species and size as that originally planted shall be planted in the same place, unless the local planning authority gives written approval to any variation.
- 24) Prior to the commencement of development samples and trade descriptions of the materials to be used in the areas of hardstanding within the development hereby permitted shall be submitted to and approved in writing by the local planning authority. Wherever

practicable, hard surfacing materials shall be of a permeable type to allow for surface water infiltration. The development shall be carried out in accordance with the approved details.

- 25) A landscape management plan, including long term design objectives, management responsibilities and maintenance schedule for all landscape areas, other than small, privately owned, domestic gardens, shall be submitted to and approved in writing by the local planning authority prior to the occupation of the development or any phase of the development, whichever is the sooner, for its permitted use. The landscape management plan shall be implemented and the maintenance schedules carried out as approved for the lifetime of the development.
- 26) The development hereby approved shall be carried out in accordance with the recommendations set out in the submitted "*Badger Survey Report*" dated July 2012 and the "*Baseline Ecology Site Audit*" dated May 2012.
- 27) No development shall take place until a tree and hedge protection plan and arboricultural method statement have been submitted to and approved in writing by the local planning authority. The works shall be carried out in accordance with the approved details.
- 28) No demolition, site clearance or building operations of any type shall begin until a protective fence (of at least 2 metres in height and in all other respects in accordance with BS 5837 (2012) and previously approved in writing by the local planning authority) has been erected along the boundary hedges, around the trees to be retained within the site and around those trees outside the site whose Root Protection Areas (RPA) (as defined in BS 5837 (2012)) fall within the site, at the outer limit (or beyond) their RPA or in a position agreed writing by the local planning authority. This tree protective fencing should remain in place until all construction and associated ground-works have been completed.
- 29) The development hereby permitted shall not be brought into use until the applicant has submitted to and have approved in writing a Travel Plan that promotes sustainable forms of travel to the site with the local planning authority. This Plan thereafter will be implemented and updated in agreement with the local planning authority.
- 30) Demolition/ ground works/ construction work shall not take place outside the following hours:
Mondays to Fridays 07.30 to 19.00 hrs
Saturdays 07.30 to 13.00 hrs
There shall be no such work on Sundays of Public Holidays.
- 31) An independent 32 amp radial circuit switch must be supplied at each property for the purpose of future proofing the installation of an electric vehicle charging point.
- 32) Prior to the commencement of the relevant part of the development hereby approved a scheme of sound insulation, ventilation and noise control measures shall be submitted to and approved in writing by the local planning authority. The sound insulation and noise control measures shall achieve the following internal noise targets (in line with guidance given in BS 8233:1999 "*Sound Insulation and Noise Reduction in Buildings – Code of Practice*":

Bedrooms (23.00 – 07.00 Hrs) 30 dB L_{Aeq,T} and 45 dB L_{Amax} (fast);

Living rooms (07.00 – 23.00 hrs) 35 dB L_{Aeq,T}; and

Private gardens (07.00 – 23.00 hrs) 55 dB L_{Aeq,T}.

The sound insulation, ventilation and noise control measures shall be carried out strictly in accordance with the details so approved and implemented prior to the first occupation of the development and shall be maintained as such thereafter.

Annex B

Agreed Appeal Drawing Schedule:

- 0093-2-102 - Location Plan
- 0093-2-200 Rev E - Planning Layout
- 0093-2-201 Construction Layout
- 0093-2-202 Slab levels
- 0093-2-203 Dimensions Plan
- 0093-2-210 Materials Plan
- 0093-2-261 Close board fence detail
- 0093-2-262 Panel fence detail
- 0093-2-263 Post & Rail Detail
- 0093-2-264 Screen Wall detail
- 0093-2-265 Brick band course detail
- 0093-2-300 Street scenes
- 0093-2-301 Sections through SUDS
- 0093-2-600 Rev B Sections
- 0093-3001G Landscape Proposals (1 of 2)
- 0093-3002G Landscape Proposals (2 of 2)
- 0093-3003G Landscape Schedules
- 0093-3200 Tree Survey
- 0093 - SW AGS2 Single Garage Plans + Elevations
- 0093 - SW AGD2 Double Garage Plans + Elevations
- 0093 - SW AGT2 Tandem Garage Plans + Elevations
- 0093 – SW Garages Eaves Details 1 Rev A
- 0093 – SW Garages Eaves Details 2 Rev A
- House Type A; House Type B Rev A; House Type C; House Type C (Plots 16 + 37); House Type D Rev A; House Type E; House Type E (Plot 5); House Type F; House Type G; House Type H; House Type J - Style 1 Rev A; and House Type J - Style 2 Rev A