



Appeal Decision

Inquiry held on 16 August 2006

Site visit made on 16 August 2006

by **David Grace** BSc Dip TP MRTPI

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



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Date: 10 October 2006

Appeal Ref: APP/W1850/A/06/2007912

Maesydari Site, Kington, South Herefordshire HR5 3FA

- 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 J R M Property Development Ltd against the decision of Herefordshire Council.
- The application Ref. DCNW/2005/3082/F, dated 20 September 2005, was refused by notice dated 30 November 2005.
- The development proposed is residential development for 58 dwellings, 88 car parking spaces, new access road and landscaping.

Summary of Decision: The appeal is allowed, and planning permission granted subject to conditions set out below in the Formal Decision.

Procedural Matters

1. During the inquiry the Council confirmed that it no longer sought to pursue the reason for refusal in respect of highways matters.
2. The appellant has provided a completed S106 unilateral undertaking, dated 16 August 2006, in respect of highways works, open space and education facilities and for affordable housing. During the inquiry the Council confirmed that this acceptably provides for its requirements in those respects.
3. At the inquiry an application for costs was made by J R M Property Development Ltd against Herefordshire Council. This application is the subject of a separate decision.

Main Issue

4. The Council has confirmed that the principle of residential development at the appeal site is in accord with development plan policy and is acceptable. I therefore consider the main issue in this appeal is whether the proposals would result in a form and layout of development that would acceptably relate to the character and appearance of the surrounding area. It is also necessary to consider whether the proposals would preserve or enhance the character or appearance of the adjacent Kington Conservation Area.

Planning Policy

5. The development plan includes Regional Planning Guidance for the West Midlands (RPG11), the Hereford and Worcester County Structure Plan 1986-2001 and the Leominster District Local Plan (Herefordshire). There is also an emerging Herefordshire Unitary Development Plan (UDP). This is at the post-inquiry stage. Proposed modifications following the Inspector's report are due to be published in September this year. Of the development plan and emerging plan policies that have been drawn to my attention, I consider below those that are most directly relevant to the issues of this appeal. The proposal is situated adjacent to the Kington Conservation Area. Accordingly I am required by the Planning (Listed Buildings and

Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.

6. Local Plan Policy A.23 includes a requirement that development proposals should create an attractive built environment and where appropriate will be required to reinforce or establish a sense of place or identity. Emerging UDP Policy S2 includes a requirement that new development should achieve a high standard of design and layout which respects, amongst other things, the townscape of the area. Local Plan Policy A.1 includes requirements that development should be of a scale and character compatible with local building traditions, respect the existing settlement pattern and reflect the density of surrounding property. Local Plan Policy A.24 includes an indication that proposals should not result in a cramped form of development when compared to the surroundings. Emerging UDP Policy H13 expects, amongst other things, that the design and layout of proposals should respect the townscape context of the site and the distinctive character and appearance of the locality. Emerging plan Policy DR1 seeks to promote or reinforce the distinctive character and appearance of a locality in terms of factors that include layout and density and the height, scale and mass of development. It also requires that the context of the site should be respected taking into account factors including townscape, urban vistas and longer views.
7. Policy H15 of the emerging UDP Revised Deposit Draft was largely supported by the UDP Inspector. It indicates that for housing developments at town centre and adjacent sites there should be a minimum net density of 50 dwellings per hectare. However, during the appeal inquiry, I was provided with information to indicate that the Council proposes to include an alteration to the deposit draft of this policy in the UDP modifications which are shortly to be published. This possible revision to the policy is to change the minimum density on such sites to a range of between 30 and 50 dwellings per hectare. As a result, I consider this throws into doubt the eventual content of Policy H15 because it may be the subject of change through the modifications process. I can therefore afford it little weight.

Reasons

8. The appeal site is previously-developed land the maximised re-use of which for housing is encouraged by Planning Policy Guidance Note 3: Housing (PPG3) and Policy H14 of the emerging UDP. PPG3 also encourages housing development that makes more efficient use of land through densities of between 30 and 50 dwellings per hectare. At 53.7 dwellings per hectare the net density of the appeal proposal would be slightly higher than this. However, the site is adjacent to the town centre where there is a range of facilities and services and public transport opportunities. In my opinion, this is a sustainable location for housing and the marginal numerical difference from the PPG3 guidelines would be acceptable in principle, particularly as PPG3 encourages a greater intensity of development at town centres. In my view, the broad accord of the proposals with the density aims of PPG3, which post dates the Local Plan, outweighs the conflict of the scheme with the criterion of Local Plan Policy A.1 in respect of density.
9. Whilst the proposals would be broadly in accord with the Government's policies in respect of the efficient re-use of previously-developed land, the overall policy framework at national and local levels requires that housing schemes should achieve an acceptable standard of design and relationship with the surroundings. In this respect, notwithstanding its numerical requirements in respect of densities, PPG3 indicates, in paragraph 56, that new housing development of whatever scale should not be viewed in isolation. Considerations of design and layout must be informed by the wider context, having regard not just to any immediate neighbouring buildings but the townscape and landscape of the wider area. Moreover, emerging UDP Policy H14 indicates that proposals for the re-use of previously-developed land for housing must be

consistent with the other policies of the plan and should respect the character and appearance of its location. I turn now to consider this.

10. The appeal site is in a run down condition and, in my view, detracts from the environmental quality of the surrounding area. It is bounded to the north, west and east by post-war residential developments. It is also adjacent to the Kington Conservation Area which is to the south. Notwithstanding the significant differences in their character, I consider the proposed development should respect and integrate with the character and appearance of both the Conservation Area and the surrounding residential area.
11. The area to the south of the appeal site has a predominately linear and continuous built form running north east - south west. It has a dense character with a strong sense of enclosure. The buildings are mainly two and three storeys and the pattern of roof heights is varied. There is a mixture of materials, although brick and render dominate. Prospect Lane runs alongside the southern boundary of the site, it is flanked to the south by a substantial stone wall and is an attractive townscape feature. The lane extends beyond both sides of the site and this accentuates the north-east to south-west alignment of development which is a distinctive characteristic of this part of the Conservation Area.
12. The southernmost part of the proposed development would comprise of a series of terraces positioned close together which would broadly have an overall north east to south west alignment. This would result in a built form that would have a largely continuous appearance which would reflect Duke Street to the south and would relate well to Prospect Lane. This part of the scheme would mainly be two storeys high but there would be variations in the roof ridge levels. Also, some dwellings would have a second floor dormer level. The external materials would be mainly brick but some colour washed render and natural stone would be used. Overall, in my view, the layout, form, height, scale, overall massing and intensity of the built form of the part of the development to the south of the access road would be in keeping with and complement the townscape of the area to the south.
13. There is a significant townscape link between Duke Street and the appeal site along Oxford Lane. At present the view towards the site from the lane is dominated by an unsightly building of utilitarian, industrial style appearance. This would be removed as part of the scheme and would be replaced by a two-storey block of affordable flats in the south east corner of the site. In my opinion, this would be to the benefit of the street scene.
14. The residential area that bounds the other three sides of the appeal site is suburban in character. There is a mixture of dwelling designs, heights, layout form, development density and plot sizes in this area. In my opinion, it does not have a distinctive unified identity or sense of place. Close to the appeal site much of the residential area aligns in a north west - south east direction and many of the dwellings are in terraces. The part of the scheme sited to the north of the access road would, in my view, acceptably respond to this context. The mainly terraced form of proposed dwellings 12-18 and 49-58 and their orientation would respect the layout of the Morgans Orchard development to the north to which this part of the scheme would closely relate. Also the proposed public open space would have a strong visual link with the development. The layout of the proposed dwellings in the north east part of the site would, in my opinion, acceptably relate to the existing pattern of development and would not appear cramped in relation to it. Dwellings 4-6 and 7-8 would be higher than nearby existing dwellings but, in my view, this would add interest to the development and would not be intrusive in the street scene.
15. Many of the proposed dwellings would have very small private gardens. However, taking into account the central position of the proposed public open space and that most of the dwellings facing towards the access road would have front gardens, I consider the street scene that would

be created would not appear oppressively cramped. Furthermore, the proposed siting of the public open space would allow long views from the site towards the hills beyond the built-up area. I also consider there would be sufficient separation between the proposed groups of dwellings in the northern part of the site for them not to appear unacceptably out of keeping with the surrounding pattern of development. Car parking would dominate the appearance of the proposed shared pedestrian/vehicle areas but, in my view, they would not appear unacceptably crowded provided they are appropriately landscaped. Also, these areas would mainly be contained to areas at the rear of the dwellings and would not result in the main public street scene appearing unacceptably cluttered or cramped. Overall, I consider the intensity, form, layout, scale, height and overall massing of the northern part of the scheme would not be unacceptably at odds with the established residential area around it.

16. I conclude on the main issue that the proposed development would have an acceptable built form and layout that would not appear overdeveloped or unacceptably affect the character and appearance of the surrounding area. It would not therefore conflict with Local Plan Policies A.23, A.24 or some of the criteria of Policy A.1 or emerging UDP Policies S2, DR1, H13 and H14 and I consider this outweighs the conflict of the proposals with the criterion of Local Plan Policy A.1 in respect of density. I further conclude that the scheme would improve the setting of the Kington Conservation Area and thereby enhance its character and appearance.

Other Matters

17. The unilateral undertaking that has been completed by the appellant includes provision for 18 **affordable housing** units. This represents 31% of the proposed dwellings as opposed to the 35% that is required by emerging UDP Policy H9. The Council says this level of provision is acceptable. Taking into account that the proposals for affordable housing include three large four-bedroom units, I agree. I also consider the affordable dwellings would be acceptably integrated into the overall development.
18. The scheme makes provision for **public open space** within the development. Also the unilateral undertaking includes a £25,000 contribution towards the upgrading of a nearby off-site play scheme and for improving a footpath link to that facility. The Council indicates that this provision would satisfy the requirements for public open space that would result from the development. Whilst interested parties are concerned that this would not be an acceptable level of provision, I have not been provided with specific evidence that convinces me to disagree with the Council's view.
19. The Council says the £58,000 contribution towards improvements to local school accommodation that is included in the unilateral undertaking would be an acceptable means for dealing with **education** needs arising as a result of the appeal scheme. I accept that view.
20. A number of interested parties, including Kington Town Council, are concerned that the proposed development would exacerbate existing problems in respect of **road safety and congestion** in the locality. However, the highways officer does not object to the proposals in this respect. The Council has confirmed that, taking into account the provisions of the unilateral undertaking and information provided by the appellant after the refusal decision, it no longer objects to the scheme in highway safety terms.
21. The part of the site that was formerly used for horticulture/nursery purposes is currently disused but it could be re-used for those purposes. Also, there are some 30 garages on the site. As a result, it has significant potential for traffic generation which could include goods vehicle movements. In my view, the appeal proposals would not be likely to result in vehicle movements that would be significantly more harmful than this. I also note that the proposed development includes small scale off-site works to highways in the locality. Furthermore, the

unilateral undertaking includes a contribution of £87,000 towards a package of measures relating to traffic calming in Llwellin Road and Greenfield Drive, road lighting and initiatives in respect of public transport, walking and cycling. Taking into account the above factors, I conclude that the proposed development would not unacceptably affect road safety or convenience in the surrounding area.

Conditions

22. In the interests of harmony with surrounding development, I consider that a condition is needed in respect of the approval of samples of materials. I also consider that, to ensure the development has a satisfactory appearance, conditions are needed in respect of the submission and approval of landscaping details, the retention of trees and hedgerows and their protection during construction. In my view, it is necessary that details of boundary treatments should be approved. This will be of great significance in relation to the surroundings of the combined pedestrian/vehicle areas where, in my opinion, the environmental quality will be highly dependent on the appearance and durability of the means of enclosure. This could be incorporated into the suggested landscaping condition. In the interests of brevity I have modified the wording of the landscaping conditions proposed by the main parties. A condition is also needed to ensure the protection of any nature conservation interests that may be present on the site.
23. In the interests of highway safety, I consider that conditions should be included in respect of the details of on-site road works and connection to the existing highway, and to control access by construction traffic and parking during the construction stage. The highways statement submitted by the appellant indicates that as part of the development a number of off-site highway works are to be carried out by the developer. These need to be specified by means of a condition. I also consider a condition to ensure satisfactory cycle parking is needed. In the interests of neighbours' living conditions I include a condition to control the hours during which construction works may take place.
24. Taking into account the relatively high density of the scheme, the preponderance of small gardens, the importance to the quality of the development of maintaining the unified design of the groups of dwellings and the potential visibility of gardens from the shared amenity and access areas, I consider there is justification for the control of permitted development in respect of the erection of fences, gates, walls, garages and other buildings, extensions and dormer windows.
25. I do not include the condition proposed to control the burning of materials on the site. This can be dealt with under other powers. The Council suggests a number of informatives. I do not include them.

Conclusions

26. For the reasons given above and having regard to all other matters raised, including those at the application stage, I conclude that the appeal should succeed.

Formal Decision

27. I allow the appeal, and grant planning permission for residential development for 58 dwellings, 88 car parking spaces, new access road and landscaping at the Maesydari Site, Kington, South Herefordshire HR5 3FA in accordance with the terms of the application, Ref. DCNW/2005/3082/F, dated 20 September 2005, and the plans submitted therewith, subject to the following conditions:

- 1) The development hereby permitted shall begin before the expiration of three years from the date of this decision.
- 2) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the development hereby permitted have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 3) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 (or any order revoking and re-enacting that Order with or without modification), no fences, gates, walls, extensions, garages or other buildings or dormer windows other than those expressly authorised by this permission shall be erected.
- 4) No development shall take place until a scheme for landscaping has been submitted to and approved in writing by the local planning authority. The scheme shall include details of existing trees and hedgerows and an indication of which are to be retained together with measures for their protection during the construction period. It shall also include details of boundary treatments and lighting. The landscaping scheme shall be carried out in accordance with the approved details and completed by no later than the first planting season following completion of the development hereby permitted. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the local planning authority gives written approval to any variation.
- 5) None of the existing trees and hedgerows on the site that are shown in the approved landscaping scheme to be retained shall be removed, destroyed, felled, lopped or pruned without the prior written consent of the local planning authority.
- 6) No development shall take place until an ecological survey, the scope of which shall first be approved in writing by the local planning authority and which shall include a mitigation strategy, has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved mitigation strategy.
- 7) No development shall take place until details of off-site highway works associated with the development hereby permitted, including widening of Prospect Lane and Greenfield Drive footpath connections and installation of improved lighting and re-surfacing works to Prospect Lane and Greenfield Drive have been submitted to and approved in writing by the local planning authority. The development hereby permitted shall not be occupied until the approved scheme has been completed in accordance with the approved details.
- 8) No development shall take place until the details of the highway drains and roads associated with the development hereby permitted, including the works necessary to provide access from the public highway, have been submitted to and approved in writing by the local planning authority. The development hereby permitted shall not be occupied until the approved scheme has been completed in accordance with the approved details.
- 9) No development shall take place until a scheme for the provision of secure cycle parking on the site has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 10) No development shall take place until a scheme for access to the site by construction traffic and for parking for site operatives and visitors has been submitted to and approved in writing by the local planning authority. Such access and parking shall take place in accordance with the approved details.
- 11) No construction work shall take place, no machinery shall be operated and no deliveries taken at or despatched from the site outside the following times: 0700 hours to 1800 hours Monday to Friday, 0800 hours to 1300 hours on Saturdays nor at any time on Sundays, Bank or Public Holidays.

D Grace

INSPECTOR

The Inspector has reviewed the appeal and the Council's decision. The Inspector has also visited the site and has spoken to the Council's Planning Officer. The Inspector has also reviewed the Council's decision and the Council's reasons for its decision. The Inspector has also reviewed the Council's decision and the Council's reasons for its decision. The Inspector has also reviewed the Council's decision and the Council's reasons for its decision.

The Council's decision is based on the following reasons:

1. The Council is concerned about the impact of the proposed development on the surrounding residential area.
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The Inspector has considered the Council's reasons and has concluded that the Council's decision is not justified. The Inspector has concluded that the Council's decision is not justified. The Inspector has concluded that the Council's decision is not justified. The Inspector has concluded that the Council's decision is not justified. The Inspector has concluded that the Council's decision is not justified.

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APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Hugh Richards of Counsel	Instructed by the Council's Head of Legal Services
He called	
Andrew Murphy	Stansgate Planning Consultants on behalf of Herefordshire Council
BA Hons MSc MRTPI	

FOR THE APPELLANT:

Gary Grant	Instructed by C S J Planning
He called	
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K Lewis	9 Greenfield Drive, Kington HR5 3AD
Cllr T James	Cross Farm, Kington HR5 3EX
Dr J Rerrie	41 Duke Street, Kington HR5 3BL
A Lloyd	Swan Close, Hergest Road, Kington HR5 3EL
C Widdowson	17 Victoria Road, Kington HR5 3BX

DOCUMENTS

Document 1	Council's letter of notification and circulation list
Document 2	S 106 unilateral undertaking submitted by the appellant
Document 3	Letter from J M Briggs objecting to the appeal proposals
Document 4	Statement of objection submitted by Kington Town Council
Document 5	Conditions proposed by the appellant
Document 6	Comments on the Council's proof of evidence submitted by the appellant
Document 7	Documents previously omitted from the appendices to the evidence of D Daw
Document 8	Letter from the Forest of Dean Housing Association submitted by the appellant
Document 9	Extract from By Design submitted by the appellant
Document 10	Extract from draft Council minutes dated 28 July 2006 submitted by the Council

PLANS

Plans A1-A11	Application plans
Plan B	Illustrative landscape proposals
Plan C	Kington Conservation Area boundary

PHOTOGRAPHS

Photos 1-8	Photographs of the site and surroundings submitted by the appellant
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