

Appeal Decision

Site visit made on 4 October 2016

by Stephen Normington BSc DipTP MRICS MRTPI FIQ FIHE

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

Decision date: 7th November 2016

Appeal Ref: APP/R1038/W/16/3153336

1 Shire Lane, Heath, Chesterfield S44 5SQ

- 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 Mr John Morris against the decision of North East Derbyshire District Council.
 - The application Ref 16/00391/OL, dated 7 April 2016, was refused by notice dated 1 June 2016.
 - The development proposed is an outline application with all matters reserved for the construction of one detached dwelling.
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Decision

1. The appeal is allowed and outline planning permission is granted with all matters reserved for the construction of one detached dwelling at 1 Shire Lane, Heath, Chesterfield S44 5SQ in accordance with the terms of the application, Ref 16/00391/OL, dated 7 April 2016, subject to the attached schedule of conditions.

Procedural Matters

2. The proposal seeks outline planning permission, with all matters of detail reserved for future consideration. I have treated the drawing submitted showing an indicative site layout and the position of the proposed access position on Shire Lane as illustrative

Application for costs

3. An application for costs was made by Mr John Morris against North East Derbyshire District. This application is the subject of a separate Decision.

Main Issues

4. The main issues are:
 - Whether the proposal is a sustainable form of development having regard to the Council's spatial strategy for new housing, 5 year housing land supply and the location of the site outside of the settlement development limits for Holmewood and Heath.
 - The effect of the proposed development on the character and appearance of the surrounding area.
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- Whether the proposed development can be safely undertaken and occupied having regard to the location of the site with a high risk coal mining area and its proximity to a recorded mine entry.

Reasons

Sustainable Development

5. The appeal site comprises the northern part of the garden of the host property and positioned close to the junction of Shire Lane with Mansfield Road. The host property is one of several that are located in a ribbon development form on the northern side of Mansfield Road on the approach to Heath and lying approximately 365m and 550m from the settlement development limits of Holmewood and Heath respectively. As such the site is located within the countryside.
6. The North East Derbyshire Local Plan 2005 (Local Plan) was adopted some time before the publication of the National Planning Policy Framework (the Framework). Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five year supply of housing. The Council acknowledge that they do not have a five year supply of deliverable housing sites.
7. The proposal should, therefore, be considered in the context of paragraph 14 of the Framework which sets out the presumption in favour of sustainable development. It also states that where the development plan is absent, silent or out of date permission should be granted unless any adverse effects of doing so would significantly and demonstrably outweigh the benefits.
8. The Council's approach to the consideration of new development outside of settlement development limits is set in Saved Policies GS1, GS6 and H3 of the Local Plan. Saved Policy GS1 seeks to ensure that all proposals contribute to achieving a sustainable pattern of development. Criteria a) states that development proposals will be located within defined Settlement Development Limits, unless the development is acceptable in the countryside or there are overriding exceptional circumstances. Insofar as the policy relates to settlement development limits and, therefore, restricts the supply of housing, I consider the policy to be out of date. However, the objectives of achieving a sustainable pattern of development remain valid.
9. Saved Policy H3 of the LP states that housing should only be located outside defined settlement development limits if the proposal falls within one of the categories listed. As the policy seeks to restrict the supply of housing I consider it to be out of date insofar as it relates to this appeal.
10. Saved Policy GS6, amongst other things, seeks to restrict new development in the countryside to that which requires a countryside location. As this relates to the supply of housing I consider this part of the policy to be out of date. However, the policy also requires that any development that does occur should be in keeping with the character of the area and should not represent a prominent intrusion into the countryside. I consider that this part of the policy remains valid.
11. In the absence of an up-to-date Plan the Council has prepared an Interim Planning Policy which provides guidance for proposed residential development outside defined settlement development limits. Whilst it is a material

consideration, it does not form part of the Development Plan and, therefore, holds limited weight.

12. The Council have argued that the site is not suitable for housing due to its unsustainable location. However, paragraphs 7 and 8 of the Framework advise that there are three dimensions to sustainable development: economic, social and environmental that should be sought jointly and simultaneously through the planning system. I will now consider each of these in turn.
13. The appellant indicates that the site is within an 8 minute walk to Heath village which has a nursery, church, village hall and public house. The Holmewood local centre is approximately 1.6km away which contains a range of facilities to meet local needs. At my site visit I observed that there are adequate walking links with some street lighting to both Heath and Holmewood and that bus stops are positioned just a few metres from the proposed site entrance.
14. Taking these factors into account I consider that site is within adequate walking and public transport links to local facilities. Whilst it is inevitable that some services would be accessed by car, given the opportunity for walking, cycling and public transport use, I do not consider that the location of the appeal site would cause significant environmental harm.
15. Given the relationship of the site to existing and proposed ribbon development along Mansfield Road, I do not consider that the proposed development would constitute an isolated home in the countryside. In my view, the proximity of the site to nearby properties and Heath would allow for social interaction and help support the facilities within the village. Consequently, the proposed development would provide some positive social benefit.
16. Whilst the Council has not identified any economic harm, there would be some economic benefits associated with the construction of the proposed dwelling in terms of local employment and the supply of materials. On occupation there would be a small continued support towards local facilities and services as well as providing a modest contribution to housing supply. Overall, the proposed development would have some economic benefits.
17. Taking the above factors into account, and considering the relevant policies in the Framework as a whole, I find that the proposal would amount to a sustainable form of development. Consequently, there would be no conflict with paragraphs 6, 49 and 55 of the Framework or Saved Policy GS1 of the Local Plan in so far as it remains relevant in relation to the principles of sustainable development.

Character and appearance

18. The appeal site is currently used as a garden and contains a substantial storage building on its northern boundary. Beyond this boundary is a narrow agricultural field that abuts the cutting of the A617. Shire Lane continues over the A617 by a bridge. A drive through Starbucks coffee outlet and Motorhome retailer are located on the A617 to the east of the bridge. In my view the A617 provides a substantial change in character between the ribbon development and commercial development along Mansfield Road and the A617 and the wider open countryside to the north towards Sutton Scarsdale.
19. The proposed development would not result in any further encroachment of the current curtilage of No 1 into the countryside. Owing to the position of the

existing host dwelling and boundary treatment the proposed dwelling would not be readily visible from Mansfield Road. Views of the site from Shire Lane are partially screened by the existing storage building and boundary treatment.

20. The proposal would not be prominent in the context of the local landscape nor unacceptably extend development into the countryside. Whilst there would be some visual impact, given the locational factors identified above, this would not be of an extent that would cause demonstrable and unacceptable harm to the character and appearance of the area.
21. Consequently there would be no conflict with Saved Policy GS6 of the Local Plan insofar as it requires that new development in the countryside should be in keeping with the character of the area and should not represent a prominent intrusion into the countryside.

Coal mining risk

22. The Coal Authority has identified that the appeal site is located within a Development High Risk Area and indicate that the site is likely to have been subject to historic unrecorded underground coal mining at shallow depth. Their records also indicate the presence of a recorded mine shaft within the site. At my site visit the appellant indicated that the shaft was located within the adjacent field to the north and had been filled by the previous owner of No 1.
23. The appellant also suggests that the Coal Authority inspected the site in relation to the construction of the storage building and a letter dated 9 February 2012 following the inspection confirmed that there were no problems associated with former mine workings in relation to that development. I agree with the appellant that there is a reasonable prospect that the zone of influence of the former shaft is unlikely to effect the proposed site of the dwelling itself.
24. In objecting to the planning application in respect of the appeal development the Coal Authority advised that further work was required in the form of amended plans illustrating the precise location of the mine entry with the proposed development avoiding this mine entry and its zone of influence. This information is necessary to determine the extent of past coal mining activities and the implications for the layout and design of the proposed development.
25. Taking into account the advice of the Coal Authority and that provided in paragraph 120 of the Framework, I consider that an appropriate planning condition can be imposed requiring further intrusive investigations to be undertaken to identify the presence of any mine entries and a scheme to be submitted identifying measures for the treatment of mine entries and any remedial work that may affect the construction, design and foundations details of the dwelling.
26. Subject to the imposition of such condition, I consider that adequate controls can be put in place to ensure that the proposed development can be safely undertaken and occupied.

Other matters

27. Both main parties have drawn my attention to previous appeal decisions, both allowed and dismissed, in the Borough relating to development located within the countryside. However, I do not have full details of the nature of the

proposals or the circumstances relating to these appeals. Consequently, I cannot be sure that these are wholly representative of the circumstance in this appeal. In any case, I have determined this appeal on its own merits.

28. I have considered the Council's argument that allowing this appeal would set a precedent for other similar developments along Mansfield Road. However, each appeal must be considered on its individual merits and a generalised concern of this nature does not justify withholding permission in this case.

Conditions

29. The Council has suggested a number of planning conditions which I have considered against the advice given in paragraph 206 of the Framework and the guidance contained in the section on 'Use of Planning Conditions' in the government's Planning Practice Guidance. As a result, I have amended some of them for clarity and eliminated some for the reasons set out below.
30. I have attached conditions limiting the life of the planning permission and setting out the requirements for the submission of reserved matters. I have specified the approved plans in the interests of certainty. In order to protect the character and appearance of the area, I have also imposed conditions concerning the external materials to be used, landscaping, details of ground and floor levels and details of boundary treatment.
31. In the interests of highway safety I also agree that adequate provision should be made for the parking of two cars for each dwelling and that the sole access should be taken off Shire Lane.
32. Taking into account the proximity of the site to former mine workings, I agree that conditions are required to make adequate provision for the treatment of mine entries that may affect the construction, design and foundations of the dwelling and any contamination found during the course of the construction works. These conditions are required in order to ensure that the dwelling can be safely constructed and occupied. However, I have amended the Council's suggested conditions to be more precise and to provide timescales for the submission of details and implementation of any remediation work.
33. I consider that the Council's suggested condition requiring the submission of a scheme for mitigating climate change is not sufficiently precise, enforceable or adequately reasoned. Whilst I note the Council's broad aspirations behind such condition, I have no evidence of any environmental objectives or standards that such a wide ranging condition is seeking to achieve. Consequently I am not persuaded that the suggested condition would meet the relevant guidance regarding the use of conditions.
34. The Framework advises that planning conditions should not be used to restrict national permitted development rights unless there is clear justification for doing so. Whilst I note that the appellant is content for the imposition of a condition restricting certain permitted development rights I am not satisfied that the Council's suggested condition removing many householder rights is necessary as, other than the enlargement of the proposed dwellings, no detailed explanation for the removal of other permitted development rights is given. However, I have restricted extensions to the proposed dwelling, which appears to me could otherwise be enlarged excessively in relation to the plot size and adversely affect the character and appearance of the area.

35. Finally, the appellant also suggested a condition to control external lighting. Given the countryside location of the appeal site I consider that the suggested condition is reasonable in the interests of controlling light pollution.

Conclusion

36. For the above reasons, and taking into account all other matters raised, I conclude that the appeal should be allowed.

Stephen Normington

INSPECTOR

CONDITIONS SCHEDULE

1. Plans and particulars of the reserved matters relating to the access, appearance, landscaping, layout and scale shall be submitted to and approved in writing by the local planning authority prior to the commencement of any development and the development shall be carried out as approved.
2. Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
3. The development hereby permitted shall begin not later than two years from the date of approval of the last reserved matters to be approved.
4. The development hereby permitted shall be carried out in accordance with the following approved plans: DSC. 633.03 Proposed Indicative Layout; Site Location Plan.
5. No building operations shall take place until details and/or samples of the materials to be used in the construction of external surfaces of the dwellings hereby permitted have been submitted to and approved in writing by the local planning authority. The construction of the development shall thereafter be undertaken in accordance with the approved details.
6. No development shall take place until details of finished ground and floor levels, existing site levels and levels on adjoining land, all relative to the same existing datum point, have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
7. In the event that contamination not previously identified by the developer prior to the grant of this planning permission is encountered during the development, all works on site (save for site investigation works) shall cease immediately and the local planning authority shall be notified in writing within 2 working days. Unless otherwise agreed in writing with the local planning authority, works on site shall not recommence until either (a) a Remediation Strategy has been submitted to and approved in writing by the local planning authority or (b) the local planning authority has confirmed in writing that remediation measures are not required. The Remediation Strategy shall include a timetable for the implementation and completion of the approved remediation measures. Thereafter remediation of the site shall be carried out and completed in accordance with the approved Remediation Strategy. Following completion of any measures identified in the approved Remediation Strategy a Validation Report shall be submitted to the local planning authority. Unless otherwise agreed in writing with the local planning authority, no part of the site shall be brought into use until such time as the whole site has been remediated in accordance with the approved Remediation Strategy and a Validation Report in respect of those works has been approved in writing by the local planning authority.
8. Prior to the submission of the reserved matters application, intrusive site investigations shall have been undertaken to determine the extent of any past coal mining activities on the land in so far as they would have implications for the layout, design and nature of foundation works of the development. A report of those intrusive site investigation works and implications for the

layout, design and nature of foundation works shall be submitted to the local planning authority no later than concurrent with the reserved matters application. The report shall include a plan showing the precise location of mine entries, the zone of influence and a scheme of any required remediation and measures to ensure that foundation and construction methods are suitable and timetable for the implementation of any required remediation works. No development shall commence until the report and scheme has been approved in writing by the local planning authority. The remediation measures shall thereafter be implemented and the development shall be undertaken in accordance with the approved details and timescales.

9. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking, re-enacting or modifying that Order), the dwellings hereby permitted shall not be enlarged under the provisions of Schedule 2, Part 1, Class A or B of that Order.
10. No building operations shall commence until a scheme of landscaping has been submitted to and approved in writing by the local planning authority. The landscape scheme shall include details of all hard and soft landscaping, planting plans written specifications (including cultivation and other operations associated with tree shrub hedge establishment) schedules of plants noting species plant sizes the proposed numbers and densities and an implementation programme.
11. All hard and soft landscaping works including planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the first occupation of the dwellings or the completion of the development, whichever is the sooner; and 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.
12. The sole means of vehicular access from the site shall be from Shire Lane only and there shall be no vehicular access to Mansfield Road.
13. No development shall take place until a plan indicating the positions, design, materials and type of boundary treatment to be erected has been submitted to and approved in writing by the local planning authority. The boundary treatment shall be provided in accordance with the approved details and shall be completed before the first occupation of any of the dwellings. The approved boundary treatment shall be retained thereafter.
14. No dwelling shall be occupied until space has been laid out within the site for the parking and manoeuvring of two cars to serve each dwelling and that space shall surfaced and thereafter be kept available at all times for the parking of vehicles.
15. Prior to the commencement of the development details of any external lighting shall be submitted to and approved in writing by the local planning authority. External lighting thereafter provided shall be provided and retained only in accordance with the approved details.