

Appeal Decision

Hearing held on 2 November 2016

Site visit made on 2 November 2016

by Louise Nurser BA (Hons) Dip UP MRTPI

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

Decision date: 6 December 2016

Appeal Ref: APP/W3005/W/16/3151018

Land off 139 Chesterfield Road, Huthwaite, Nottinghamshire NG17 2QF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mrs F Pether against the decision of Ashfield District Council.
 - The application Ref V/2015/0391, registered on the 26 June 2015, was refused by notice dated 6 January 2016.
 - The development proposed is outline planning application for residential development up to 37 dwellings including the formation of vehicular access and demolition of existing structures.
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Decision

1. The appeal is allowed and planning permission is granted for outline planning application for residential development up to 37 dwellings including the formation of vehicular access and demolition of existing structures at land off 139 Chesterfield Road, Huthwaite, Nottinghamshire NG17 2QF in accordance with the terms of the application, Ref V/2015/0391, registered 26 June 2016, and the plans submitted with it, subject to the conditions set out in the attached schedule.

Application for costs

2. At the Hearing an application for costs was made by Mrs F Pether against Ashfield District Council. This application is the subject of a separate Decision.

Procedural matters

3. As the declaration form on the application was left blank, I have taken the date of the application as being when the application was registered.
 4. The application was submitted in outline for development of up to 37 dwellings, with only the matter of access to be determined at this stage. A number of supporting documents accompanied the application including an indicative master plan. However, matters of appearance, landscaping, layout and scale are matters for future consideration.
 5. A signed and dated Statement of Common Ground (SoCG) between the Council and appellant was provided before the hearing. This made clear that the proposed S106 offer proposed by the appellant was considered as acceptable to the Council given the limited viability of the appeal site. Following the submission of the appeal, the appellant submitted a signed and dated unilateral
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undertaking relating to monies for the capital improvement of facilities at the Huthwaite Welfare Park. I have referred to the relevance and necessity of the planning obligation later within my decision.

6. In addition, since the appeal was submitted the emerging Ashfield District Council Publication Plan was ratified by Full Council on the 6th October 2016. Formal pre submission consultation is to take place from the 4th of November to 19th December 2016. This document includes the appeal site as part of a wider housing allocation.
7. Prior to the Hearing the Council submitted its most up to date Housing Land Monitoring Report¹ together with a Technical Update and Position Statement. Following my request I subsequently received a Joint Housing Position Statement dated 1 November 2016.
8. Following the close of the hearing I accepted a copy of an email from the appellant relating to the unilateral undertaking which whilst it had been sent to the Planning Inspectorate, due to administrative error had not been forwarded to me. As its contents were discussed at the Hearing and the original email had been copied to the Council, no party was prejudiced by my accepting it.

Main issues

9. From what I have seen, heard and read I consider that the main issue in this appeal is whether or not the proposed scheme is appropriate having particular regard to: a) the proposed access arrangements; b) the housing supply situation in the area; and c) in the event of the Council not being able to demonstrate a five year supply of deliverable housing land, whether other material considerations would significantly and demonstrably outweigh the benefits of the scheme.

Reasons

10. The appeal site measures around 1.19 ha and is located on the north western edge of Huthwaite. I observed that a small part of the site closest to the settlement consists of a mixture of wooden garages and storage buildings of varying states of repair. In addition, there were a number of metal storage containers. The majority of the appeal site consists of a large field of open land which according to the Statement of Common Ground is used for grazing. A smaller narrow field makes up the eastern part of the site. A public footpath bisects the site.

Policy Background

11. The 'saved' policies of the Adopted Ashfield Local Plan Review 2002 make up the adopted Local Plan (LP). The appeal site is identified as falling within the Countryside and therefore the criteria set out in Saved Policy EV2 are relevant. As such only a limited range of developments are considered to be appropriate, including infill development. The adopted LP identified housing land requirements for the period 1991- 2011.
12. The appeal site together with a larger area of land to its east is identified as a housing site (SKA3d) within the emerging Ashfield Local Plan (eALP) which is currently the subject of pre Submission consultation. Therefore, as confirmed

¹ Published October 2016

at the Hearing the proposed allocation of the site for housing and the adjoining land to the east, is considered to be sound by the Council. I am mindful of Paragraph 216 of the Framework which requires decision- takers to give weight to relevant policies in emerging plans according to the stage of the preparation of the plan and the extent to which there are unresolved objections. However, as the consultation period has not yet expired I am unable to consider the extent to which there are any unresolved objections to the allocation, and have accorded the emerging allocation limited weight.

13. Saved Policies HG5 and ST1 of the LP relate to development management matters including impacts of development on highway safety, and are generally consistent with the policies in the Framework.
14. I must also take in to account the Framework as a material consideration of significant weight. Paragraph 47 of the Framework notes that to boost significantly the supply of housing, local planning authorities should use their evidence base to ensure that their Local Plan meets the full, objectively assess needs (OAN) for housing in the housing market area and should identify and update annually a supply of deliverable sites sufficient to provide five years' worth of housing, plus a buffer, against their housing requirements.
15. Paragraph 49 states that housing applications should be considered in the context of the presumption in favour of sustainable development and Paragraph 14 puts the presumption in favour of sustainable development at the heart of the Framework. It explains that for decision taking, the presumption means approving development proposals that accord with the development plan without delay and where, where the development plan is absent, silent or relevant policies are 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 the Framework as a whole- or specific Framework policies indicate that development should be restricted.
16. Paragraph 49 is clear that if the local planning authority cannot demonstrate a five year supply of deliverable housing sites, then relevant policies for the supply of housing should not be considered to be up-to -date. Saved Policies ST4 and EV2 of the LP restrict development outside of the settlements and sites allocated for developments and it is my view that these should be treated as relevant policies for the supply of housing.

Highway matters

17. The appeal site is proposed to be accessed off Chesterfield Road which following a tight bend slopes down out of the village. The appeal proposal provides for the relocation of the existing narrow access point further down the hill to provide greater visibility. I observed, and from what I have read from interested parties and as part of the Council's case that traffic accelerates when leaving the village. Nonetheless, from the evidence before me I understand that the speed of traffic at the 85th per centile has been reported at 35.5 miles per hour (mph) or 32 mph (appellant's and Highway Authority's evidence respectively) and as such Chesterfield Road is considered for the purposes of highway safety to be a street. Both parties agree that the provisions of the County's 6C Design Guide are applicable, which is based on the Safe Stopping Distances set out in the Manual for Streets 2.

18. The Highway Authority did not recommend that the Council refuse the proposed development and following the application's initial deferral at Planning Committee reiterated that it was unable to substantiate a reason for refusal on highway grounds, having considered local accident records which I am aware were only 2 instances, rather than the 4 which had been referred to, together with the slope and the bend of the road. Nonetheless, the appellant has calculated the safe stopping distance (SSD) required for the appeal site on the basis of the 35.5 mph measurement. This SSD is based on a formula from the Manual for Streets, rather than relying on the table contained within the 6C Design Guide which provides for a SSD based on a range of speeds, such as 31mph-35 mph, and 36 mph- 40 mph. The use of the formula inputting data specific to the site results in a SSD of 55.8 m compared to the 65 m suggested by the local planning authority, or the original 55 m to which the Highway Authority made no objection.
19. I have also been mindful of the recorded accidents nearby which I understand are attributable to driver error, rather than the particular physical attributes of the road. I have carefully considered the proposed access taking particular care to consider the impact of the existing bus stop which is located close to the brow of Chesterfield Road. Indeed, as part of the site visit I requested that one of the land owners wait at the bus stop to the south of the proposed site entrance so that I was able to consider the impact of people congregating at the bus stop on the visibility of oncoming traffic as it came around the bend. Having observed this, and the prospect of buses waiting at the bus stop, taking into account the technical evidence before me and the lack of any substantive evidence from the Council demonstrating that severe harm would result from the new access, I conclude that it would be possible, subject to the imposition of appropriate conditions, to provide a safe and appropriate access to the proposed development with visibility splays of a minimum of 56 m in either direction and therefore, the proposed development would accord with the provisions of Saved Policies ST1 and HG5.
20. I also note that there may be other means not before me to reduce the speed of traffic which the Highway Authority is exploring such as interactive speed monitors.

Housing Land Supply

21. Both parties agreed that for the purposes of this appeal that the appropriate Housing Market Area should be the whole of the district and that the 5 year period should be that set out in the 2016 Housing Land Monitoring Report (2016 HLMR). In addition, there is agreement that the annual housing requirement of 480 dwellings calculated by GL Hearn, and which has been derived from evidence underpinning the emerging Local Plan, can be used for to calculate the five year requirement. I have no reason to conclude otherwise. However, clearly, determining the exact figure of the OAN is a matter for the Examining Inspector in any future consideration of the emerging LP.
22. From what I have seen and heard, the housing supply situation is at best marginal, ranging from 4.99 years to 5.00 (one dwelling below or above the five year supply, depending on whether the Liverpool or Sedgfield methodology is used) and at worst, if a 20% buffer was to be considered to be appropriate, 4.37 years.

23. I have taken into account the Council's conservative approach of only including 45% of the SHLAA sites within the 5 year supply. Nonetheless, from the evidence before me, including reference to the Council achieving the highest delivery rates in the County, I am of the opinion that the figures are not sufficiently robust to demonstrate a five year supply of deliverable housing.
24. For example, whilst I note that the Council were of the opinion that in the same way the delivery of some housing may slip, conversely other sites may equally come forward earlier in the plan period, I share the appellant's cynicism in relation to sites such as the Station Motors, Station Road Sutton coming forward within the five year period. This is because in order to be acceptable in principle for housing, a marketing exercise is required to demonstrate that they are no longer viable for commercial use and from what I heard at the Hearing I have not been convinced that this site and other similarly constrained sites would be available and deliverable within the 5 year period.
25. Therefore, given the already marginal supply as set out in the Council's evidence, and from what I have seen and heard at the hearing, for the purposes of the appeal before me, I am unable to conclude with any confidence that the Council is able to demonstrate a five years' supply of deliverable housing sites.

Other matters

26. The appeal site lies on land identified as open countryside, albeit a small area is currently occupied by a number of outbuildings. The proposed development would clearly change the appearance of the appeal site. Whilst I note the attractive nature of the undeveloped element of the appeal site it is the Council's position as set out in the eALP that the appeal site is suitable, together with neighbouring land to be identified as housing land. From what I observed on site, and from the evidence before me, in visual terms there is nothing before me to suggest otherwise. Moreover, details of the final design and appearance of the site including landscaping could be controlled at reserved matters. This should ensure that any development would generally accord with the character and appearance of the wider area as much as possible given the construction of new housing, and that views from the public footpath would be considered.
27. It has been argued that the site should be developed as part of a wider development, as apparently this would allow for the contribution up to £4000 per dwelling, as well as 20% starter homes and 10% affordable rental homes. However, detailed evidence to support the proposition is not before me, and I am mindful that it is not the Council's case as confirmed within the Statement of Common Ground, that the appeal site should have been refused on the basis of inadequate provision of infrastructure. Moreover, given the relatively early stage of the eALP it would be inappropriate to give significant weight to the emerging wider allocation. Indeed, even were I to do so, I must consider the proposed development before me on its individual merits, as would any future decision maker when considering a proposal on this site.
28. Local residents expressed concern about the ability of local schools and doctors to cope with increased demand. However, I note from the signed Statement of Common Ground that the Council accepted that the viability of the site was such that only a limited contribution from the proposed development was

acceptable². In addition, I have been referred to other possible impacts of the proposed development such as loss of hedgerows and trees, and potential impact on wildlife. However, whilst I understand the importance of such matters I note that there have been no technical objections to the proposed development on these grounds. In addition, concerns have been raised in relation to potential increase in litter, the impact of the proposed development on the structural stability of neighbouring properties, impact on the embankment and drainage matters.

29. As detailed below, as the proposed development is in outline there is nothing before me to suggest that subject to detailed conditions, that the proposed housing could not be successfully developed without resulting in significant and demonstrable harm.

Planning obligation

30. The appeal proposal is accompanied by a signed and dated unilateral undertaking submitted following the submission of the appeal. It has been confirmed that this is in a form acceptable to the Council.
31. The financial contribution related to monies to be spent on capital improvement of facilities at Huthwaite Welfare Park or such other public open space as the Council and the owner may agree. However, I have not been provided with any detailed evidence to define the extent of any local deficiencies or the effect that the proposal might have on it, nor the justification made for figure of £25 000. Accordingly, I cannot be certain that the contributions sought would be necessary to make the development acceptable or that they would be directly related to the development and fairly and reasonable related in scale and kind.
32. Consequently, and notwithstanding the aim of saved Policy HG6 of the ALPR, I am unable to conclude that the planning obligation would comply with Regulation 122 of the Community Infrastructure Levy Regulations 2010. I am therefore unable to take the undertaking into account in determining the appeal.

Conclusion and Planning Balance

33. I have found that the proposed development would not accord with Saved Policy EV2 of the LP as it would not accord with the list of developments considered as appropriate within the countryside. However, given my conclusion relating to the housing supply situation that for the purposes of this appeal that the Council is unable to demonstrate a 5 year supply of deliverable housing sites and that the appeal site is identified within the emerging local plan as part of a wider housing allocation I have accorded the conflict with the development plan limited weight.
34. In addition, I have found that the access arrangements are consistent with Saved Policies ST1 and HG5 of the LP.
35. Paragraph 14 of the Framework sets out a presumption in favour of sustainable development. The Framework identifies that there are three dimensions to sustainable development: economic, social and environmental. The proposed development would contribute to the local economy through construction jobs

² Paragraph 6 of the SoCG

to which I accord moderate weight. I note that the proposed development would not contribute any affordable housing, and would make limited financial contributions but in the context of the appeal before me and the agreed position in relation to viability matters set out in the SoCG I accord this limited weight.

36. I am aware that the final scale and mix of housing is unknown. However, as the appeal relates to an outline application such matters can be resolved at reserved matters, and therefore does not weigh in the balance. Moreover, I accord the provision of market housing considerable weight as a social benefit.
37. From my site visit I was aware that the majority of the appeal site forms an attractive element of the open countryside, which is well screened in the summer but would be more visible in the winter and that a public footpath passes through the site. Clearly, any development would result in its loss. However, from what I have seen and heard I conclude that the loss of the open countryside to the proposed development would have a limited environmental impact.
38. Consequently, having taken into account the matters raised locally, in line with Paragraph 49 of the Framework I conclude that the limited harm of the conflict with the development plan, does not significantly or demonstrably outweigh the substantial benefits of housing delivery that the scheme would bring when assessed against the Framework as a whole. The proposal can therefore be considered sustainable development, for which the Framework presumes in favour. Taken as a whole, this is a material consideration such that determination of this appeal may be made other than in accordance with the development plan. Therefore, I conclude that the appeal should be allowed.

Conditions

39. The Council has suggested a number of conditions that it would wish to see imposed in the event that the appeal was allowed. These were discussed in detail at the Hearing in the light of the advice on conditions contained within the Planning Practice Guidance.

Conditions 1-4

40. Conditions are required to provide certainty as to the timing of the submission, and the subject of reserved matters. I have altered the conditions by removing the reference to access matters from the reserved matters.
41. For clarity I have added a condition setting the upper limit of the proposed development consistent with the planning application.

Conditions 5-7

42. I have only referred to the location and site access plan within the condition 5. All other matters other than access are reserved matters. Therefore, amended plans and studies will be required to reflect detailed designs. For reasons of highway safety I have required that the visibility splay be a minimum of 56 metres.
43. In the interests of clarity, details relating to the technical aspects of the access and junction are required, as is control over its retention and the permanent closure of the existing vehicular access.

Condition 8

44. I have amended the reference to landscaping as this is already covered within condition no 1.

Conditions 9 and 10

45. These conditions are required to protect nearby residents' living conditions.

Conditions 11 and 12

46. The appellant has submitted technical information relating to drainage and flooding. However, full details are still required to be provided relating to foul and surface water drainage to ensure satisfactory provision.

Decision

47. For the reasons given above, and having considered all the matters raised in evidence and at the hearing, I allow this appeal.

L. Nurser

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Paula Daley Bsc (Hons) Pg Dip MRTPI	Phoenix Planning Ltd
Abigail Evans	HSP Consulting Engineers Ltd
Felicity Pether	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Jonathon Imber MRTPI	JMI Planning
Lisa Furness Pg Dip MRTPI	

DOCUMENTS

- 1 Hearing notification letter
- 2 Public notice advertising appeal.
- 3 Detail of planning application referred to at hearing.
- 4 Hard copy of Housing Land Monitoring Report.

SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall comprise no more than 37 dwellings.
- 5) The development hereby permitted shall be carried out in accordance with the following approved plans: Location drawing: 14-170-02 and C2140-200.
- 6) Notwithstanding condition 5, development shall not otherwise commence until details of the vehicular access serving the development and the junction between the proposed access road and the highway shall have been submitted to and approved in writing by the local planning authority; and the development shall not be occupied until that junction has been constructed in accordance with the approved details. The visibility splays shall be designed to be of a minimum of 2.4 metres x 56 metres. Once provided the visibility splays shall be maintained and kept free of all obstructions over a height of 0.6 metres above carriageway level. The junction shall thereafter be retained.
- 7) Notwithstanding condition no 5, no development shall commence until a detailed scheme for the internal access up to 10 metres into the site has been submitted to and approved by the local planning authority, and no dwelling shall be occupied until the works have been constructed in accordance with the approved details. The scheme shall include full design details, specifications, road markings/signage, street lighting and a programme of implementation for the permanent closure of the existing vehicular access and reinstatement of redundant access on site frontage with full height kerbs.
- 8) No trees, shrubs or hedgerows shall be removed other than those whose removal is directly required to accommodate the development and has previously been approved as part of the details to be submitted pursuant to condition 1 above.
- 9) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) the location and design of site compound with associated temporary buildings;
 - ii) the parking of vehicles of site operatives and visitors;
 - iii) loading and unloading of plant and materials;

- iv) storage of plant and materials used in constructing the development;
- v) wheel washing facilities;
- vi) measures to control the emission of dust and dirt during construction;

The approved Construction Method Statement shall be adhered to throughout the construction period for the development.

- 10) Demolition or construction works shall take place only between hours of 08:00 to 18:00 Monday to Friday, and shall not take place at any time on Saturdays, Sundays or on Bank or Public Holidays.
- 11) None of the dwellings hereby permitted shall be occupied until works for the disposal of sewage shall have been provided on the site to serve the development hereby permitted, in accordance with details that have first been submitted to and approved in writing by the local planning authority.
- 12) No building hereby permitted shall be occupied until surface water drainage works shall have been implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
 - i) provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
 - ii) include a timetable for its implementation; and,
 - iii) provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.

END OF SCHEDULE OF CONDITIONS