
Appeal Decision

Site visit made on 23 November 2016

by Mrs J A Vyse DipTP DipPBM MRTPI

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

Decision date: 04 January 2017

Appeal Ref: APP/B3030/W/16/3158075

Little Hollies, The Close, Averham NG23 5RP

- 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 Mr and Mrs D Burke against the decision of Newark and Sherwood District Council.
 - The application, No 16/00859/FUL, dated 27 May 2016, was refused by a notice dated 12 August 2016.
 - The development proposed is the creation of a three bedroom house.
-

Decision

1. For the reasons that follow the appeal is allowed and planning permission is granted for the erection of a three bedroom house at Little Hollies, The Close, Averham, in accordance with the terms of the application, No 16/00859/FUL, dated 27 May 2016, subject to the conditions set out in the attached schedule.

Main Issue

2. In relation to rural areas, Spatial Policy 3 (SP3) the Newark and Sherwood Core Strategy DPD (the Core Strategy) states, among other things, that local housing need will be addressed by focusing housing in sustainable, accessible villages. Beyond 'Principal Villages' (Averham is not identified as a Principal Village) the policy sets out that proposals for new development will be considered against five criteria: location, scale, need, impact and character.
3. The appeal site lies within the built-up area of Averham, within the settlement boundary. Three previous appeals relating to the erection of a dwelling on this site have been dismissed in the recent past, each narrowing the areas at issue.¹ My colleagues found that Averham is a suitable and sustainable location for small infill development, with the latter two decisions confirming that the design of the proposed dwelling was acceptable, that it did not comprise over-development, it would not appear cramped on its plot and that there would be no harm to the character and appearance of the Conservation Area within which the site lies.
4. Apart from some internal modifications as a consequence of the changing needs of the appellants' dependants (for whom the house is intended) the dwelling proposed is of the same external appearance and siting within the plot as was the subject of the last two appeals. I am mindful, in this regard, that it is no part of the Council's case that the development proposed would conflict

¹ Application No 11/00150/FUL Appeal Ref: APP/B3030/A/11/2162334; Application No 12/00705/FUL Appeal Ref: APP/B3030/A/12/2188232; Application No 13/01468/FUL Appeal Ref: APP/B3030/A/13/2220069

with the location, scale, impact or character criteria of policy SP3 in relation to villages such as Averham. I have no reason to take a different view. On that basis, the main issue in this case relates to whether there is an identified proven local need for new housing in Averham, having regard to the provisions of policy SP3.

Reasons for the Decision

5. The Council does not draw my attention to any definition of 'local need' in the terms of policy SP3. However, in September 2013, subsequent to the second appeal decision, the Council published 'Spatial Policy 3 Guidance Note', which sought to explain the policy in order to aid consistency in decision making. Whilst no copy of that document is before me, the Inspector who dealt with the last of the appeals on this site commented that the Note indicated that policy SP3 was intended to serve the public interest, rather than that of individuals and that consequently, the proven local need to which it refers was that of the community rather than the applicant (the local need previously argued by the appellants related to the need for accommodation for a close relative). She recorded that the Note goes on to say that the policy is not intended to cater for individuals' desire to live in particular locations or in particular types of accommodation, an approach she found to be in broad accordance with the Government's Planning Practice Guidance (planning guidance) which refers to the general view of the Courts that planning is concerned with land use in the public interest.² She found that policy SP3 and the Guidance Note aligned generally with the advice in the Framework and the planning guidance, going on to conclude that the individual needs of the appellants in that case could not readily be equated to a proven local need in the terms of policy SP3.
6. In relation to the development the subject of the current appeal, there is no evidence before me to demonstrate that there is an identified proven local housing need in terms of the needs of the wider community, as opposed to the personal needs of the appellants such as, for example, a local housing needs survey carried out perhaps by the Parish Council or some other organisation. Absent such evidence, I conclude that the development proposed would conflict with policy SP3. However, policy SP3 is a policy that is relevant to the supply of housing. As such, having regard to the advice at paragraph 49 of the Framework, it is not to be considered up-to-date if the local planning authority cannot demonstrate a five year supply of deliverable housing sites.
7. The officer's report in relation to the application the subject of this appeal refers to uncertainty in respect of the delivery of a five year housing land supply. There being no other harm, the report recommended that the application be approved. Members, however, took a different view, and the application was refused. Now, at the time of this appeal, the Council maintains that it can currently demonstrate a five year supply of housing land.
8. The Core Strategy, which was adopted in 2011, sets out a housing requirement of some 740 dwellings per annum. That figure was formulated before publication of the Framework and was derived from the now revoked East Midlands Regional Plan Strategy. As such, it would have been constrained by the policy considerations of the time. Accordingly, whilst the Core Strategy figure is preferred by the appellants, I agree with the Council that it cannot be

² Paragraph: 008 Reference ID: 21b-008-20140306

said to be up-to-date in the terms of the Framework, since it does not plan to meet the full objectively assessed housing need of the District.

9. Although the Council has started work on a Local Plan review, it is still at an early stage, with submission for examination not expected until at least spring 2017. As part of the evidence base for that emerging plan, the Council suggests that its full objectively assessed need (OAN) is in the region of 454 dwellings per annum (a figure derived from the Nottingham Outer Strategic Housing Market Assessment October 2015, using 2013 as a base date). Against that figure, it is maintained that a five year supply of housing land can be demonstrated currently.
10. That figure was the subject of detailed scrutiny at an Inquiry in November 2015 in relation to an appealed application for residential development elsewhere in the District.³ Based on the evidence before her, and taking account of economic circumstances, market signals and the need to increase affordable housing provision, the Inspector in that case concluded that the OAN for the District was likely to be higher. She went on to conclude that the Council could not demonstrate a five year supply of housing land.
11. Whilst the Council does not agree with the Inspector's reasoning on this matter, or the assumptions made, there is no indication as to precisely what its specific concerns are. It is confirmed, in this regard, that supporting information on this is to be provided for the Local Plan review in due course. I note though, that for the purposes of this appeal, the Council accepts that the 454 figure cannot be attributed full weight and that the appeal decision is a material consideration.
12. In support of its case, the Council draws attention to a couple of strategic sites within the District which are progressing: one is an outline application for 1800 dwellings on land south of Fernwood that Members are minded to approve, subject to a planning obligation; the other relates to a recent application for landscape reserved matters approval for part of phase 1 of an earlier outline permission for residential development on a site to the south of Newark. However, whilst those schemes may well have positive implications for the supply of housing land within the District in due course, there is no indication as to the likely timescale for the delivery of housing on those sites.
13. The Council's preferred figure has not been tested through the Local Plan review process. Although the Council contests the findings of the Inspector following detailed examination of the figure at a Public Inquiry, no substantiated evidence is before me to undermine the Inspector's findings that the OAN was likely to be higher and that the Council could not demonstrate a five year supply. Whilst there may be some progress on two strategic sites within the District, the timescale for delivery, and thus the contribution that they could make to the five year supply, is unclear. On balance therefore, I am not persuaded, for the purposes of this appeal, that the Council can currently demonstrate a five year supply of housing land. On that basis, policies relevant to the supply of housing, including policy SP3, are not to be considered as up to date.
14. In these circumstances, paragraph 14 of the Framework sets out that, for decision taking, the presumption in favour of sustainable development means

³ Appeal Ref: APP/B3030/W/15/3006252 Land at Southwell Road, Farnsfield, Nottinghamshire

that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies of the Framework taken as a whole, or where specific policies in the Framework indicate that development should be restricted. There being no harm other than the conflict with policy SP3, I am satisfied that the presumption in favour of sustainable development, as set out in paragraph 14 of the Framework, applies in this instance and I conclude, on balance, that the appeal should succeed.

Conditions

15. I have considered the conditions suggested by the Council in the light of the advice in the Framework and the Government's Planning Practice Guidance. The Council has suggested a one year time limit on commencement of development. However, no reason is given for the foreshortened timing. In the absence of such, I see no reason not to impose the usual three year time limit on commencement of development in this instance. (1)
16. It is necessary to ensure that the scheme is carried out in accordance with the approved plans, as this provides certainty. (2)
17. Conditions relating to external materials, detailed design of doors, windows and rainwater goods and removal of the existing garage are necessary in the interest of visual amenity and to protect the character and appearance of the Conservation Area within which the appeal site lies. (3, 4, 5, 8) The suggested condition relating to tree protection refers to the submitted tree constraints plan (TCP-01). However, that plan does not show which trees are to be retained. It simply shows crown spread and root protection areas. Plan No DB 389-A104 shows which trees are to be removed. Those not shown as being removed will need protection during the construction process. I have amended the wording of the suggested condition accordingly. (6)
18. The Council requests a condition requiring details of boundary treatment. However, boundary treatment is clearly shown on the submitted plans and there is no suggestion, in this regard, that the details shown are unacceptable in any way. Since development is to be carried out in accordance with the plans, I find the suggested condition to be unnecessary.
19. A condition requiring the submission of details relating to hard and soft landscaping is also suggested. However, the scheme relates to a single dwelling. As such, I am not persuaded that it is reasonable or necessary to control planting within the garden to the property. I agree though, that any hardsurfacing materials need to be agreed with the authority, in the interest of visual amenity, given the location of the site within a Conservation Area. (7)
20. In order to protect the privacy of both future residents of the proposed dwelling and of adjoining residents, conditions precluding the formation of additional windows within the side facing elevations and requiring the provision of obscure glazing to the side facing landing and bathroom/toilet windows are necessary. I have amended the wording such that the conditions relate only to first floor windows – I am not persuaded that there would be privacy issues in relation to side facing ground floor windows. (9, 10)
21. Conditions relating to the provision of a new vehicular verge crossing for the occupiers of Little Hollies, pedestrian access to the dwelling proposed,

permanent closure of the existing garage access off The Close, and provision of on-site parking for the proposed dwelling are necessary in the interest of vehicular and pedestrian safety. (11, 12, 13, 14)

22. In order to protect the character and appearance of the Conservation Area and to safeguard the amenities of adjoining occupiers, I agree that some residential permitted development rights should be removed, although not to the extent suggested by the Council. In particular, I am not persuaded that it is necessary to remove permitted development rights in relation to the erection of porches nor, given the restrictions that apply in any event in Conservation Areas, am I persuaded that it is necessary to remove permitted development rights under the provisions of Schedule 2 Part 1 Class B (additions or alterations to the roof), Class G (the installation, alteration or replacement of a chimney, flue or soil and vent pipe) or Class H (the installation, alteration or replacement of a microwave antenna). Again, I have amended the condition accordingly. (15)

Jennifer A Vyse
INSPECTOR

Schedule of Conditions
Appeal APP/B3030/W/16/3158075
Little Hollies, The Close, Averham

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) Unless required otherwise by the conditions set out below, the development hereby permitted shall be carried out in accordance with the following approved plans:
 - Revised Site Location Plan, Drawing No. DB 389 – A100 Rev B
 - Proposed Site / Block Plan, Drawing No. DB 389 – A104
 - Proposed Dwelling Plans and Elevations, Drawing No. DB 389 – A102 Rev C
- 3) No development shall be commenced until details/samples of the bricks and roofing tiles to be used have been submitted to and approved in writing by the local planning authority. Development shall thereafter be carried out in accordance with the approved details.
- 4) No development shall be commenced until a brickwork sample panel showing brickwork, bond, mortar mix and pointing technique has been provided on site for inspection and approval has been received in writing by the local planning authority. All subsequent walling shall match the approved sample panel in terms of detailing.
- 5) No development shall be commenced in respect of rainwater goods and external windows (including roof windows) and doors, and their immediate surroundings including details of glazing and glazing bars and joinery details, until details of the design, specification, fixing and finish in the form of drawings and sections at a scale of not less than 1:10 have been submitted to and approved in writing by the local planning authority. Development shall thereafter be undertaken in accordance with the approved details.

- 6) No development shall be commenced until the trees not shown as being removed on plan No DB 389-A104 have been protected by the following measures, which measures shall be retained during construction works, unless otherwise agreed in writing by the local planning authority:
 - a) a chestnut pale or similar fence not less than 1.2 metres high shall be erected at the outer extremity of the tree canopies, or a distance from any tree or hedge in accordance with details to be submitted to and approved in writing by the local planning authority;
 - b) no development (including the erection of site huts) shall take place within the crown spread of any tree;
 - c) no materials (including fuel and spoil) shall be stored within the crown spread of any tree;
 - d) no services shall be routed under the crown spread of any tree;
 - e) no burning of materials shall take place within 10 metres of the crown spread of any tree.
- 7) No development shall be commenced until details of external hard surfacing materials have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 8) The dwelling hereby approved shall not be occupied until the existing garage shown to be removed on drawing No DB 389 – A104 has been demolished in full and all materials removed from the site.
- 9) Prior to first occupation of the dwelling hereby permitted, the bathroom and landing window openings on the first floor side elevations shall be fitted with obscure glazing to level 3 or higher on the Pilkington scale of privacy or equivalent and shall be non-opening up to a minimum height of 1.7m above the internal floor level of the room in which it is installed. The glazing shall be retained in accordance with this condition thereafter.
- 10) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification) no windows, including dormer windows (other than those expressly authorised by this permission) shall be constructed on the first floor side elevations of the dwelling hereby permitted.
- 11) The dwelling hereby permitted shall not be brought into use unless and until the new vehicular verge crossing off Pinfold Lane to serve Little Hollies, as shown on plan No DB 389-A104 has been provided in accordance with details that shall previously have been submitted to and approved in writing by the local planning authority.
- 12) The dwelling hereby permitted shall not be brought into use unless and until the new pedestrian access to the dwelling has been provided in accordance with details that shall previously have been submitted to and approved in writing by the local planning authority.
- 13) The dwelling hereby permitted shall not be brought into use unless and until the existing garage access from The Close (shown on plan DB389-A104) has been permanently closed and the verge reinstated in

accordance with details that shall previously have been submitted to and approved in writing by the local planning authority.

- 14) The dwelling hereby permitted shall not be brought into use unless and until the on-site parking area for the proposed dwelling has been provided in accordance with details that shall previously have been submitted to and approved in writing by the local planning authority. The parking area so provided shall thereafter be retained in perpetuity and shall be kept available for its intended purpose.
- 15) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification) and other than as may be expressly authorised by this permission, no development within the following Classes of Schedule 2, Part 1 of the Order shall take place:
- Class A: The enlargement, improvement or other alteration of a dwellinghouse, including extensions to the property and the insertion or replacement of doors and windows.
- Class C: Any other alteration to the roof of a dwellinghouse.
- Class E: Development within the curtilage of a dwellinghouse.
- Class F: The provision or replacement of hard standing within the curtilage of a dwellinghouse.

[END OF SCHEDULE]