

Appeal Decision

Site visit made on 10 November 2016

by Richard Schofield BA(Hons) MA MRTPI

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

Decision date: 10th January 2017

Appeal Ref: APP/W2465/W/16/3154944

Land at 78 Bath Street, Leicester

- 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 Fredrick Hopkins against the decision of Leicester City Council.
 - The application Ref 20150625, dated 1 April 2015, was refused by notice dated 8 February 2016.
 - The development proposed is change of use of land to provide one pitch for a gypsy family.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Mr Hopkins' gypsy status for planning purposes is agreed between the parties. Based on all that I have read, I have no reason to depart from this consensus.

Main Issues

3. The main issues are:
 - the effect of the proposed development on the character and appearance of the Green Wedge;
 - the effect of the proposed development on the site's ecology;
 - whether the appeal site is an appropriate location for the development proposed, having regard to the requirements of national and local planning policy in relation to flood risk; and
 - whether the proposed development makes appropriate provision for foul drainage.

Reasons

Green Wedge

4. The appeal site is situated within a Green Wedge, as defined by the Leicester City Core Strategy (the Core Strategy). Core Strategy Policy 13 is clear that green wedges will be maintained as areas of land that prevent the merging of built up areas of the City and adjoining settlements, and to provide a 'green lung' into the inner urban area. Their function as open space for leisure or recreational purposes will be maintained and enhanced. Development within a
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green wedge will be expected to serve the open space, be of a high quality design and of an appropriate scale and size for its location.

5. The appeal proposal would neither result in the merging of built development nor, being a private site, hinder the Green Wedge's function as open space. Nonetheless, it would not 'serve' the open space, as required, and I am not persuaded that the proposal could be regarded as being of a high quality design, regardless of materials, comprising as it would a utilitarian amenity block, a mobile home, hardstanding and close boarded fencing. Hedgerow planting rather than fencing might lessen the impact of these features but, given the limited size of the plot, there is no evidence before me to suggest that there is room to accommodate such planting or that it would be effective.
6. In addition, Leicester City Local Plan (the Local Plan) policy GE06, Protection of Green Wedges, sets out a series of criteria against which development proposals in Green Wedges should be assessed. Of these, the most relevant is criterion a). This is clear that proposals should not affect the predominantly open and undeveloped character of a green wedge.
7. At the time of my visit the site was enclosed by a wire mesh fence and was largely overgrown with scrub, although some low mounds of bricks and masonry were visible upon it. Even with the fencing around it, the site does not appear as 'developed'. It merges relatively seamlessly into the natural, uncultivated expanse of open land beside and beyond it, contributing to the sense of openness at this point on Bath Street.
8. The appeal site is clearly distinct from the Showpeople's site with which it shares a boundary, the latter being relatively well screened and not especially prominent in the street scene. In contrast, the appeal site is very visible, abutting Bath Street. It is readily apparent when approaching from either direction by road and when using the public rights of way into the open space. It appears as part of the open space, rather than an obviously visually or physically discrete plot connected to any extant development.
9. Development upon the appeal site would be readily apparent from the public realm. It would, in my judgement, appear as an intrusion into what is a well-defined edge, and entry point, to the Green Wedge, adversely affecting its open and undeveloped character.
10. It is stated that the site has a poor visual impact and is subject to fly tipping. Notwithstanding that there is no evidence of the latter, there are other mechanisms available to tidy up a site other than developing it.
11. I conclude, therefore, that the appeal scheme would have an adverse effect upon the character and appearance of the Green Wedge. It would conflict with Core Strategy policy 13 and Local Plan policy GE06, the requirements of which are noted above.

Ecology

12. As well as being in a Green Wedge, the appeal site lies within the Silt Tip and Bestways Biodiversity Enhancement Site. Although not entirely 'green', the site appears to have been reclaimed by nature and there is no reason to consider that it does not perform an ecological function. Indeed, it is not disputed that the site and adjacent land is an important site for wildlife.

13. There is no evidence before me as to the effect which the proposed development could have upon ecological interests on the site. Consequently, I cannot be satisfied that there would be no adverse impact upon it as a result of the proposed development. In addition, the Council has also raised concerns about the potential use of the site by a protected species, which have not been addressed.
14. As such, I consider that a precautionary approach is required and that it would be inappropriate for ecological surveys to be conditioned. The presence or otherwise of a protected species on the site must be established and understood in advance of planning permission being granted such that it can be considered accordingly. Similarly, the nature and feasibility of any potential mitigation for ecological impacts more generally should be established in advance of any development being permitted. It may be that native planting could play a role in potential mitigation but, again, there is no evidence before me to indicate that this is achievable or, indeed, desirable.
15. I conclude that it has not been adequately demonstrated that the appeal scheme would not have an adverse impact upon the site's ecology. For the same reasons I cannot be satisfied that the proposal would not conflict, therefore, with Core Strategy policy CS17 and Local Plan policy GE03, which seek, among other things, to ensure that new development maintains, enhances and/or strengthens connections for wildlife. CS17 also requires ecological surveys and assessments to be undertaken, where appropriate, to establish the presence or absence of protected species or habitats.

Flood risk

16. The Environment Agency (EA) has objected to the appeal proposal in robust, evidenced terms. As the EA is the Government's adviser on matters of flood risk, I give its views considerable weight.
17. It is not disputed that the appeal site lies in fluvially dominated Flood Zone 3a, at a high probability of flooding, primarily from the River Soar, which is about 190 metres to the north. In the event of a flood, water depths on the site and its access could exceed 0.5 metre, rising to about 1 metre. The site is also shown, in the Council's Surface Water Management Plan, to be at risk of flooding from surface water, which gives additional weight to my concerns in relation to this matter.
18. The Planning Practice Guidance (PPG) defines mobile homes intended for permanent residential use, such as the appeal proposal, as being Highly Vulnerable. The PPG is clear that such a use should not be permitted in Flood Zone 3a. The National Planning Policy Framework (the Framework), which is a material consideration to which I give substantial weight, is clear that inappropriate development in areas at high risk of flooding should be avoided by directing development away from such areas. A Sequential Test is required to steer development accordingly. No such Test has been undertaken.
19. In addition, the Framework requires a site-specific flood risk assessment to be undertaken for all proposals for new development (including minor development and change of use) in Flood Zone 3. Again, no such assessment has been provided. This means that there can be no certainty that a vulnerable use such as that proposed by the appellant could be adequately protected from flooding. The appellant has proposed a number of potential

solutions but, in the absence of anything more than an assertion that they may be appropriate, there can be no certainty that they would be both effective and not increase the risk of flooding elsewhere in the area.

20. I note the presence of the Showpeople's site in the same Flood Zone, which the appellant asserts must be evidence of flood risk having been successfully overcome. This site, however, appears to be of some considerable vintage, having been in place long before current planning policy requirements. Nor is there any evidence before me as to the flood mitigation, if any, in place for that site. As such, I give it little weight as a precedent for the appeal scheme.
21. Appeal decisions in relation to Gypsy sites elsewhere in the country, in areas at risk of flooding, have been drawn to my attention. Here, the Inspectors allowed the appeals. Again, however, these decisions pre-date current planning policy requirements and in both instances flood risk assessments had been provided. They attract little weight in my considerations.
22. I conclude that the appeal proposal is not an appropriate location for the development proposed, having regard to the requirements of national and local planning policy in relation to flood risk. It would fail to comply with the requirements of the Framework, set out above, and with Core Strategy policy CS02. This requires new development to be directed to locations with the least impact on flooding or, where it takes place in flood risk areas, to have mitigation measures put in place.

Foul drainage

23. The appellant has suggested that the site could be drained into the main sewer that runs along Bath Street, rather than into a cess pit as currently proposed. I note that there is no objection to the scheme from Severn Trent Water and that the Council 'welcomes' this suggestion. This being so, on the evidence before me, it is reasonable to consider that this is a matter that could be addressed by condition, ensuring that drainage was secured by means that would have far less probability of potentially polluting the area in the event of flooding.
24. I conclude, therefore, that the appeal scheme could make appropriate provision for foul drainage. It would not conflict, therefore, with Core Strategy policies CS02, CS13 and CS17, which seek, among other things, to ensure that new development gives priority to sustainable drainage techniques; considers the potential impact upon wildlife; and maintains and enhances the function of open space.

Other Considerations

General need for and provision of gypsy sites within the City

25. The Council states that there remains a need for additional permanent Gypsy and Traveller sites in Leicester. The clear inference from this is that it is unable to demonstrate a five-year supply of sites to meet current need. Core Strategy policy CS9 notes that regard will be given to the assessment of need and level of existing provision, when considering proposals for Gypsy sites. This is a matter to be weighed in the planning balance.
26. Paragraph 27 of the Planning Policy for Traveller Sites (PPTS) is clear that where a local planning authority cannot demonstrate an up-to-date five year

supply of deliverable sites, this should be a significant material consideration in any subsequent planning decision '*when considering applications for the grant of temporary planning permission*'. The appellant is, however, seeking a permanent permission in the first instance and, as such, this does not weigh heavily in favour of the proposal.

Planning Balance and Conclusion

27. The proposal is contrary to Core Strategy policy CS13 in relation to the protection of Green Wedges and policy CS02 in relation to flood risk. Noting in particular the strategic nature of the former, I conclude that the proposal would be contrary to the development plan as a whole.
28. Policy H of the PPTS requires applications for Gypsy sites to be assessed in accordance with the presumption in favour of sustainable development and with regard to the application of specific policies in the Framework and the PPTS. It identifies a range of relevant matters to be considered, including the existing level of local provision and need for sites; the availability of alternative accommodation; the personal circumstances of the applicant; and locally specific criteria used to guide the assessment and allocation of sites.
29. Within this overall policy context, the specific harm arising from the development in relation to its conflict with the development plan, identified above, must be weighed against any identified benefits. Further, any interference with the rights of the appellant must be balanced against the wider public interest in pursuing the legitimate aims of the development plan and Framework, as well as considerations in relation to the Public Sector Equality Duty (PSED) contained in the Equality Act 2010.
30. There is a clear shortfall of sites available in the City to meet its future need for Gypsy and Traveller accommodation. The immediate contribution that the appeal site would make towards meeting that need is a factor that attracts moderate weight when considering the grant of a permanent planning permission.
31. Nonetheless, there is no evidence before me that there is a lack of appropriate sites elsewhere in Leicestershire, which appears to be the appellant's desired area of search, which could provide suitable accommodation. I also have very significant concerns about the risk to future occupiers from flooding, which is a factor to which I afford very significant weight. Added to this is the significant weight afforded by the harm to character and appearance, and the lack of an ecology survey and mitigation information.
32. The appellant appears to be accommodated elsewhere and is seeking a site in Leicestershire generally, rather than Leicester specifically. I am mindful of the, albeit unevicenced, assertion that land values are such that the appellant's choices are limited. There is not, however, any suggestion that, other than a general desire to have a permanent base in the county, the appellant has a particular personal need, as opposed to a desire, which would merit a grant of planning permission for this site specifically. Nor is there any suggestion that the dismissal of the appeal would give rise to any interference with the appellant's home and family life.
33. In this context, I do not consider that the dismissal of the appeal scheme would give rise to any conflicts with the three aims of the PSED. The site is

unacceptable in planning terms and the appellant would not, in my judgment, suffer any adverse impacts, under the PSED, from being unable to locate here.

34. In terms of a permanent planning permission I conclude, therefore, that the factors in support of the appeal, namely the contribution that the proposal would make to the general unmet need for gypsy and traveller accommodation in the City, does not outweigh the serious risks to future occupiers arising from potential flooding, and the other identified conflicts with the development plan.
35. The PPTS provides that the lack of an up-to-date five-year supply of deliverable sites is a significant material consideration when considering an application for a temporary planning permission. Adjusting the weight ascribed to the lack of a five-year supply accordingly, I still conclude that the adverse factors convincingly outweigh those in support of the proposal such that a temporary planning permission cannot be justified.
36. Thus, for the reasons given above, and taking all other matters into consideration, I further conclude that the appeal should be dismissed.

Richard Schofield

INSPECTOR