

Appeal Decision

Site visit made on 3 January 2017

by Gareth W Thomas BSc(Hons) MSc(Dist) PgDip MRTPI

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

Decision date: 18th January 2017

Appeal Ref: APP/G2435/W/16/3155841

71 The Spittal, Castle Donington, Leicestershire DE74 2NQ

- 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 Quod Bonum (FFS) Ltd against the decision of North West Leicestershire District Council.
 - The application Ref 16/00027/FULM dated 22 December 2015 was refused by notice dated 12 July 2016.
 - The development proposed is for the erection of 13 dwellings with vehicular access, landscaping and car parking.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 13 dwellings with vehicular access, landscaping and car parking at 71 The Spittal, Castle Donington, Leicestershire DE74 2NQ in accordance with the terms of the application, Ref 16/00027/FULM, dated 22 December 2015, subject to the conditions in the Schedule attached to this decision.

Application for costs

2. An application for costs was made by Quod Bonum (FFS) Ltd against North West Leicestershire District Council. This application will be the subject of a separate Decision.

Procedural matters

3. The appeal was originally scheduled to be considered by way of a Hearing; however, this was subsequently changed to be considered by way of exchange of written representations.
4. Following the lodging of the appeal, the appellant has submitted a signed Unilateral Undertaking, which is considered further below.

Main Issues

5. The main issues in this appeal are: (i) the weight that should be given to policies that prevent encroachment by development into a locally defined sensitive area and (ii) the effect of the development on the form and character of the area.

6. After considering each of the main issues, and any other relevant matters raised, I undertake a planning balance to consider the benefits and disbenefits of the proposed development.

Reasons

Policy Context

7. The appeal site comprises part of the garden to 71 The Spittal and an escarpment field steeply sloping in parts with wooded edges and hedgerows that screens the site from Campion Hill above containing largely suburban houses and the open recreation grounds off The Spittal below. Immediately to the east lies the outer limit to the designated Castle Donington Conservation Area (CA). In essence the escarpment field is a continuation of the escarpment that leads in a north-westerly direction from the Castle ancient monument and includes an area of open space maintained by the Parish Council.
8. The significance of the CA adjacent to the appeal site derives to a significant degree from the distinct built elements differentiated by the natural topography of the village. It has a medieval core radiating from the castle and market changing to an eclectic mix of buildings including individual fine Georgian and Regency buildings before expanding into a Victorian area of the main village centre shops and commercial buildings. The defining feature is the influence of topography that has resulted in many buildings built on plinths and solid boundary features. However, the Council's heritage advisor opined that the proposed development would not cause any demonstrable harm to the setting of the CA or to the setting of The Spittal, a Grade II Listed Building; I agree with such findings. Paragraphs 133 and 134 of the National Planning Policy Framework (the Framework) are not therefore engaged.
9. The development plan for the area includes the Adopted North West Leicestershire Local Plan (LP). The more up to date Framework is a significant material consideration. The Council has submitted its replacement Draft Local Plan for examination with hearings scheduled for early 2017. At this juncture the weight I can afford to the Draft Local Plan is limited.
10. LP Policy E1 establishes a series of Sensitive Areas, which are areas within or closely related to urban areas that, amongst other things, comprise important amenity or other open areas within settlements. The text to the policy explains that it is important that such areas are kept free from development in view of the contribution they make to local environmental quality. However, this latter point, in itself, demonstrates that this policy is not up-to-date with the more recent planning policy context established by the Framework, where there is no blanket protection of areas either within settlements or in the open countryside. Rather, the thrust of national policy is to substantially boost the supply of housing. Moreover, the officer report to Committee explained that the appeal site lies in a sustainable location within the defined Limits to Development.
11. In view of the above points and notwithstanding that the LP remains part of the statutory Development Plan, I have to conclude that Policy E1 is out-of-date, and should not be given full weight in this appeal when assessed against the guidance in paragraph 215 of the Framework, a position acknowledged in the original officer report and a policy approach that will not be taken forward into the new Local Plan. Overall the above points lead me to conclude that the

appeal proposal should be assessed using the approach in the second bullet point of paragraph 14 of the Framework. Although the appellant has indicated that the Council cannot presently demonstrate a 5 year supply of deliverable housing land, which appears to be supported by a recent appeal¹ involving a housing proposal at Colville. In the event, I do not consider that such matters bears relevance in the context of this appeal and I need not dwell further on that point.

12. Amongst other things, paragraph 14 explains that a presumption in favour of sustainable development lies at the heart of the Framework and I explore the question of whether or not the appeal proposal can be considered to be sustainable development. However, it is first necessary to assess the likely impact of the proposed development on its surroundings, and it is to that matter which I now turn.

Character and appearance

13. Both of the Council's reasons touch on matters to be considered under this second main issue. The first alleges that the proposed development would represent unacceptable encroachment onto an unallocated greenfield land comprising an open escarpment which is of local importance as a prominent landscape feature; the second alleges that the proposed design, scale and massing would fail to respect the character and design of existing built form in the locality. In the latter respect, the Council contends that there would be an adverse effect on the character and appearance of the area and would be in conflict with LP Policies E4 and H7, and with both the Framework and emerging Local Plan.
14. Although the Council refers to a previous appeal² on the site for one dwelling, which was dismissed, this appeal predates the Framework, which does not provide a blanket protection for the natural environment, as is made clear in Section 11. As a result the weight that I am able to attribute to Sensitive Areas of open land has to be commensurately reduced.
15. The appeal proposal would clearly result in a significant change to the nature of the appeal site from a steeply sloping escarpment containing established wooded edges to the continuation and extension of the built-up area of Castle Donington. However, viewed against the context of an out of date and over restricted policy and the Government's requirement that local planning authorities should boost significantly the supply of housing, it does not automatically follow that such a change would be unacceptably harmful.
16. From my site visit, the appeal site although steeply sloping in the main has a series of relatively flat areas of shelving; the steeper parts together with the margins have mature trees and hedgerows that offer an extensive natural buffer to views into the site both from the residential area of Campion Hill to the south and to a lesser extent from long distance views into the site from the north, including the expansive recreation area of The Spittal.
17. The appeal scheme would work with the difficulties posed by the existing topography and would retain much of its present mature planting. As a consequence, I am satisfied that from most vantage points outside the appeal site, the development would be well contained and the current sense of

¹ APP/

² APP/G2435/A/10/2120960

- openness largely retained. The appellant's arboricultural report and recommendations have been supported by the Council's Tree Officer whilst conditions could be imposed that would require the undeveloped areas, which amount to some 45% of the site, according to the appellants, to be managed.
18. At present, and despite the presence of some informal pathways and desire lines through the site, public access to the appeal site is not possible. I share the appellants' view that the proposed development would open up a substantial portion of the site to public access, by creating a new footpath link, green infrastructure and managed publicly accessible open space. These are positive aspects of the appeal development in my view.
19. Turning to the design, scale and massing of the proposed dwellings, the appeal proposal would see the erection of 13 detached dwelling houses, most of which would be located to the south of the proposed linear road that has been designed as a shared access. The proposed dwellings would be contemporary in design and be set within the sloping ground. The designs incorporate useable masonry plinths and primary/secondary mass to reduce the overall impact of building into the sloping ground. The use of white painted render to the principle elevations would soften the appearance yet further. I am satisfied that the retention works required have been well designed.
20. As the Council's Urban Designer pointed out in the original officer report to Committee, the relief of the site has constrained the actual number of dwellings, which also reflects the presence of mature planting on site. A Building for Life 12³ assessment was carried out by the Council and the scheme merited twelve green indicators. I would agree with the original report that the design and layout of the architectural led development would raise the design standard in the immediate area and be well integrated into the surrounding area. I am also content that the architecture and materials palette have been influenced by the existing vernacular, including buildings found elsewhere in Castle Donington and its CA.
21. Consequently, the proposed development would comply with the requirements set out in the Council's LP Policies E4 and H7 that seek high quality designed developments that respect the wider setting and are in keeping with the character of their surroundings as well as contributing to a sense of place. These policies are in general accordance with the design aims of the National Planning Policy Framework.

Other matters

22. Paragraph 204 of the Framework, the Planning Practice Guidance and Regulation 122 of the CIL Regulations require that planning obligations should only be sought, and weight attached to their provisions, where they are: necessary to make the development acceptable in planning terms; directly related to the development; and fairly and reasonably related in scale and kind to the development.
23. There is a signed and completed UU. It requires the appellant to make financial contributions totalling £76,540 towards education provision in the vicinity of the site. This accords with the Leicestershire County Council Planning Obligations Policy

³ Building for Life 12: The Sign of a Good Place to Live 3rd Ed., Nottingham Trent University: CADBE for the Building for Life Partnership (2015)

24. I have found that the Council's requirement for a contribution towards primary and secondary education provision in this case is reasonable. I am also satisfied that the proposed contributions are necessary, directly related, and fairly and reasonably related in scale and kind to the proposed development, in accordance with CIL Regulation 122. I have therefore taken account of the UU in reaching my decision to allow this appeal.
25. There is some ecological interest on site, which has resulted in a number of concerns being raised by a local councillor, residents and the Parish Council pointing to the value of the site as a 'green lung'. The site includes the presence of five badger setts. The main sett is centrally located within a fairly dense scrub area. For the scheme to go ahead, it is considered that the subsidiary and outer setts should be closed. The appellants' ecological appraisal report confirms that badger activity at these setts is minimal. Works that disturb badgers whilst occupying a sett is illegal without a licence from Natural England. The County Council's Ecologist accepted the recommendations including the provision of a 20m exclusion zone together with the provision of a wildlife corridor within the site that would allow foraging to continue. This is catered for in the landscaping proposal and appears to me to be a commensurate response in line with the Framework and Circular 06/05: Biodiversity and Geological Conservation - Statutory Obligations and Their Impact Within the Planning System. Although the Circular provides guidance on the implementation of PPS9 which has been superseded by the Framework, the guidance is still relevant to species protection issues.
26. Local residents have also pointed to the incidence of localised flooding arising from developments to the east of the village. However the appellants' flood risk assessment (FRA) suggests that an acceptable sustainable surface water drainage scheme can be provided and a condition is imposed to require such provision in agreement with the Council. It is evident that the Council did not share these concerns following consideration of the FRA.

Conditions

27. The Council has suggested a number of conditions which I have considered against the Use of Conditions guidance set out in the Planning Practice Guidance. I have amended some of them for clarity, combined others and either amended or eliminated others because of duplication or lack of necessity.
28. In addition to the standard 3 year limitation for commencement, I have imposed a condition requiring the development to be carried out in accordance with the submitted plans in the interest of providing certainty. Conditions securing appropriate finishing materials and planting/landscaping/boundary treatment and their maintenance and retention, are necessary to safeguard the character and appearance of the area. A condition is necessary requiring certain windows facing other dwellings to be obscurely glazed in order to protect living conditions. A condition requiring prior approval of levels is necessary in the interests of preserving the character and appearance of the area. A condition requiring prior approval of bin storage and waste disposal facilities are necessary to protect living conditions. Conditions are also necessary to ensure satisfactory standard of highway provision including the widening of a section of The Spittal and provision of adequate visibility splays in the interests of highway safety. A condition is necessary to provide

satisfactory surface water drainage in the interests of protecting ground water. A condition is also necessary requiring the submission of land contamination report including where this is found subsequent to commencement of development and the carrying out of remedial measures as agreed in the interests of living conditions. Given the landscape and ecological value of the site, a condition is necessary requiring the submission and agreement and subsequent compliance with a landscape/ecological management plan together with approval of details of lighting in order to protect local ecology.

Planning balance and overall conclusions

29. In accordance with guidance contained in the Framework, I need to take a balancing exercise having regard to my view as to the conclusion reached in relation to the out-of-date development plan policy, which should carry less than full weight because of the inconsistency with the Framework. This is the weighted balance set out in the second bullet point of the decision-taking section of the Framework at paragraph 14. This indicates that planning permission ought to be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
30. From the conclusions I have reached on the main issues, I consider that the proposed development would result in some adverse impacts but that these would be limited. In summary, this would involve the loss of part of the open land comprising the escarpment and appeal site, particularly when viewed from the north.
31. Turning then to the benefits of the scheme, the Council concede that the development would meet the social and economic strands of sustainable development. I agree with the views expressed by the Council and therefore need not repeat those arguments here. In relation to the environmental strand of sustainable development, in my view the development would provide improved public access to the site and bring about ecological and landscape improvements that would be managed going forward. I have concluded that substantial weight should be given to these benefits as well as the social and economic benefits identified by the Council and which I have concurred with.
32. I would therefore conclude that the adverse impacts of the proposal would not significantly and demonstrably outweigh the substantial benefits which would arise from the development. For the above reasons and having regard to all other matters raised, this appeal is allowed.

Gareth W Thomas

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: 6976_001 Revision A; 6976_002 Revision A; 6976_003 Revision A; 6976_010 Revision A; 6976_012 Revision A; 6976_013 Revision A; 6976_014 Revision A; 6976_015 Revision B; 6976_020 Revision A; 6976_021 Revision A; 6976_022 Revision A; 6976_131 Revision A; 6976_141 Revision A; 6976_142 Revision A; 6976_151 Revision A; 6976_132; 6976_143, and; 6976_152.
- 3) No development shall take place until samples of the materials to be used in the construction of the external surfaces of the buildings hereby permitted including precise details and paint finish of all external joinery, position and materials of meter boxes and precise details of rainwater goods have been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 4) The windows serving the en-suite at first floor level and third bedroom at second floor level in the western (side) elevations of plots 1, 5, 9 and 12; en-suite at first floor level and third bedroom at second floor level in the eastern (side) elevations of plots 3 and 8; en-suite at second floor level in the eastern (side) elevations of plot 10 and en-suite at second floor level in the western (side) elevation of plot 11 shall be glazed with obscure glass and non-opening, unless the opening part is more than 1.7 metres above the internal floor level of the room in which the window is installed and once installed shall thereafter be so retained.
- 5) No development shall commence until there shall have been submitted to and approved in writing by the local planning authority a scheme of landscaping. The scheme shall include indications of all existing trees and hedgerows on the land, identify those to be retained and set out measures for their protection throughout the course of development. All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings 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.
- 6) All the trees shown on the landscaping plan as "to be retained" and/or any trees whose canopies overhang the site shall be protected by strong fencing, the location and type to be previously approved in writing by the local planning authority. The fencing shall be erected in accordance with the approved details before any equipment, machinery or materials are brought onto the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed within any fenced area, and the ground levels within those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the local planning authority.
- 7) Before first occupation of any of the dwellings hereby permitted, a detailed scheme for the boundary treatment of the site including all walls, fences,

gates, railings, other means of enclosure and retaining walls as well as the relevant elevation details of retaining walls shall be submitted to and agreed in writing by the local planning authority. The approved scheme shall be provided in full prior to the first occupation of any dwelling hereby approved unless an alternative programme for implementation has been approved by the local planning authority.

- 8) No development shall commence until the finished floor levels of the proposed dwellings and finished ground levels which shall be related to a fixed datum point off the site have first been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.
- 9) Before first occupation of any of the dwellings hereby permitted a scheme for cycle and bin storage facilities including collection areas shall be submitted to and approved in writing by the local planning authority. The facilities shall be provided before any dwellings are occupied and thereafter retained for such purposes.
- 10) No development shall commence on site until the following have first been submitted to and agreed in writing by the local planning authority:
 - Details of design for off-site highway works being the widening of The Spittal to a width of not less than 4.5 metres for a distance of 80.0 metres to the west of the site access;
 - A construction traffic/site traffic management plan, including wheel cleansing facilities and vehicle parking facilities, and a timetable for their provision.

Once agreed the development shall then be carried out in accordance with the approved details and timetable with the off-site highway works on The Spittal being provided before the occupation of the 5th dwelling.

- 11) Prior to the first occupation of any of the dwellings, hereby permitted, the following shall be provided:
 - Visibility splays in accordance with the details shown on drawing number F15007/01 Revision A within the Bancroft Consulting Limited Highway Impact Statement of July 2015 (Revised December 2015), at the junction of the access with The Spittal.
 - Any shared private drive serving more than 5 but no more than 25 dwellings shall be a minimum of 4.8 metres wide for at least the first 5.0 metres behind the highway boundary and have a drop crossing of a minimum size as shown in Figure DG20 of the 6Cs Design Guide at its junction with the adopted road carriageway.
 - Car parking shall be provided, hard surfaced and made available for use to serve the dwellings on the basis of 2 spaces for a dwelling with up to three bedrooms and 3 spaces for a dwelling with four or more bedrooms;
 - Turning facilities shall be provided, hard surfaced and made available for use within the site in order to allow vehicles to enter and leave in a forward direction. The turning area so provided shall not be obstructed;
 - The access drive and any turning space shall be surfaced with tarmacadam, concrete or similar hard bound material for a distance of at least 10.0 metres behind the highway boundary;
 - The gradient of the access drives shall not exceed 1:12 for the first 10 metres behind the highway boundary;

- Drainage shall be provided within the site such that surface water does not drain into the Public Highway including private access drives; Once provided the above shall thereafter be so maintained with nothing being positioned or allowed to grow above a height of 0.6 metres above ground level within the visibility splays.

- 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: 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; include a timetable for its implementation; and, 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.
- 13) No development shall commence until an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced), shall have been submitted to and approved in writing by the local planning authority. If any contamination is found, a report specifying the measures to be taken, including the timescale, to remediate the site to render it suitable for the approved development shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures and timescale and a verification report shall be submitted to and approved in writing by the local planning authority. If, during the course of development, any contamination is found which has not been previously identified, work shall be suspended and additional measures for its remediation shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures and a verification report for all the remediation works shall be submitted to the local planning authority within 28 days of the report being completed and approved in writing by the local planning authority.
- 14) No development shall commence until such time as an ecological/landscape management plan, which shall include long term design objectives, management responsibilities and maintenance schedules for all landscaped areas (except privately owned domestic gardens), together with a timetable for their implementation (which shall include the implementation of the escape route specified on drawing number 6976_SK_201 (Site Western Edge Woodland Walk) contained within the report by Ramm Sanderson Ecology Consultants (ref: RSE_154) of the 24th May 2016) has first been submitted to and agreed in writing by the local planning authority. The development shall

then be carried out in accordance with the agreed ecological/landscape management plan unless any variation to the agreed scheme is first submitted to and agreed in writing by the local planning authority.

- 15) Prior to the installation of any external lighting on the site the precise details and positions, including illumination levels, shall first be submitted to and agreed in writing by the local planning authority. Once agreed the lighting shall be installed in accordance with the approved details and shall thereafter be so retained.