
Appeal Decision

Site visit made on 6 February 2017

by Gareth Wildgoose BSc (Hons) MSc MRTPI

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

Decision date: 28 February 2017

Appeal Ref: APP/B3030/W/16/3164242

Land adjacent Chapel Farm, Chapel Lane, Spalford, Newark, Notts NG23 7HD

- 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 Three Shires Development against the decision of Newark & Sherwood District Council.
 - The application Ref 16/00803/OUT, dated 18 May 2016, was refused by notice dated 6 July 2016.
 - The development proposed is erection of 2 detached dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for an outline application with all matters reserved for the erection of 2 detached dwellings at Land adjacent Chapel Farm, Chapel Lane, Spalford, Newark, Notts NG23 7HD in accordance with the terms of the application ref: 16/00803/OUT, dated 18 May 2016, subject to the conditions set out in the Schedule to this decision.

Procedural Matters

2. The site address provided in the application form has been updated by the appeal form. As the site is adjacent to Chapel Farm, I have amended the site address accordingly.
3. The application was submitted in outline with all detailed matters reserved for future approval. I determine the appeal on that basis, treating the proposed elevations, site layout, floor plans and site access from Eagle Road identified within the submitted plans as illustrative.

Main Issue

4. The main issue is whether the proposal is consistent with the objectives of local and national planning policies relating to the location and supply of housing in rural areas, including development in areas at risk of flooding.

Reasons

5. Spatial Policy 1 of the Newark and Sherwood Core Strategy (CS), adopted March 2011, sets out the settlement hierarchy for Newark and Sherwood and identifies the settlements central to delivering the Spatial Strategy. Spalford, where the appeal site is located, is not included in settlements listed under the Sub-Regional Centre, Service Centres and Principal Villages categories in Spatial Policy 1. As a consequence, Spalford is categorised under Other
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Villages in Newark & Sherwood. Spatial Policy 1 indicates that where the development is not in the Green Belt, as would be the case with this proposal, development within the rest of the District will be considered against the sustainability criteria set out in Spatial Policy 3.

6. Spatial Policy 3 of the CS, amongst other things, seeks that local housing need will be addressed by focusing housing in sustainable, accessible villages. To determine such locations it sets out criteria that new development will be considered relative to its location, scale, need, impact and character. Amongst the criteria, it states that new development should be within the main built-up areas of villages, which have local services and access to Newark Urban Area, Service Centres or Principal Villages, that it should be appropriate to the proposed location and small scale in nature, and that it should meet an identified proven local need. The policy also states that development away from the main built-up areas of villages, in the open countryside, is strictly controlled and restricted to uses which require a rural setting such as agriculture and forestry and that the Allocations & Development Management DPD would set out policies to deal with such applications.
7. Policy DM8 of the Newark & Sherwood Local Development Framework Allocations & Development Management Development Plan Document (AM&DM), adopted July 2013, relates to development in the open countryside and affirms that development away from the main built up areas of villages, in the open countryside, will be strictly controlled to development types which it lists. In terms of housing specifically the criteria relates to paragraph 55 of the National Planning Policy Framework (the Framework). In that respect, the development types listed include new and replacement rural workers dwellings, conversion of existing buildings, replacement dwellings of similar size, scale and siting to that building replaced and new dwellings where they are of exceptional quality or innovative nature of design.
8. The appeal site lies adjacent to Chapel Farm House, to the east of two recent infill properties (Barn Owl Cottage and Wisteria Cottage) and to the north of Croft House. An existing access road used by Barn Owl Cottage and Wisteria Cottage leads from Eagle Road to the significantly set back position of a group of buildings within the site which consist of stables and livestock pens. The adjacent field consists of grazing land that is identified as within the same ownership as the appeal site.
9. Spalford is a small village with no defined centre or community facilities, and limited public transport provision. The built up area of Spalford consists of a group of dwellings and other rural buildings which are mostly concentrated around Chapel Lane where it meets Rabbithill Lane, Sand Lane and Eagle Road, with some additional intermittent ribbon development along the latter three roads. The village envelope of Spalford is not defined in the CS or the AM&DM. However, the site although immediately adjacent to the main built up area surrounding Chapel Lane, lies within open countryside.
10. Based on the evidence before me and my observations of the site and its surroundings, the existing use appears to fall within the definition of agriculture as defined in Section 336, paragraph (1) of the Town and Country Planning Act 1990 (as amended). Consequently, the site would not fall within the definition of previously developed land in the Framework¹ which excludes land that is or

¹ Annex 2: Glossary

has been occupied by agricultural or forestry buildings. Having regard to the criteria in Spatial Policy 3 of the CS and Policy DM8 of the AM&DM, there is no evidence before me relating to a functional and financial need for the dwellings relating to the existing use. Furthermore, as the application is made in outline with all matters reserved, at this stage I am unable to conclude that the new dwellings would be of exceptional quality or an innovative nature of design.

11. Having regard to the above, the proposal conflicts with Spatial Policy 3 of the CS and Policy DM8 of the AM&DM. The site is located in open countryside where the policies seek to strictly control development and the proposal before me does not conform to any of the listed exceptions.
12. The adoption of the CS predates the publication of the Framework. However, paragraph 211 of the Framework states that policies in Local Plans should not be considered out of date simply because they were adopted prior to the publication of the Framework, and paragraph 215 advises that due weight should be given to such policies according to their degree of consistency with the Framework. However, the Framework also requires local planning authorities to boost significantly the supply of housing². Furthermore, the Framework makes clear that relevant policies for the supply of housing should not be considered up-to-date if local planning authorities cannot demonstrate a five-year supply of deliverable housing sites³.
13. The evidence before me indicates that the housing requirement for Newark and Sherwood as set out in the CS was based on the now revoked East Midlands Regional Strategy and therefore, was not derived to meet the full objectively assessed needs (OAN) for market and affordable housing within the housing market area. As such, the housing requirement in the CS is not consistent with paragraph 47 of the Framework.
14. The Council have recently prepared a Strategic Housing Market Assessment (SHMA). The SHMA document is not before me, but the Council have indicated that it identifies an OAN for Newark and Sherwood of 454 dwellings per annum (dpa) and on that basis a five-year supply could be demonstrated. However, the SHMA will be tested in due course as part of the development plan process. Furthermore, it has been brought to my attention that a subsequent appeal at Land at Southwell Road, Farnsfield⁴, which took account of the SHMA, identified a higher OAN of 550 dpa for Newark and Sherwood and that the Council, therefore, would be unable to demonstrate a five-year supply. The Council contest the findings of the Inspector which followed detailed examination at Public Inquiry. However, there is no substantiated evidence before me that circumstances have significantly changed since the appeal decision or which would lead me to a different view to the Inspector's findings. I, therefore, must conclude that, based on the evidence available to me, the Council cannot demonstrate a five-year supply of deliverable housing sites.
15. With regard to the above and taking account of paragraph 49 of the Framework, the relevant policies for the supply of housing are not up-to-date, and therefore, only limited weight can be given to the conflict with Spatial Policy 3 of the CS and Policy DM8 of the AM&DM. In such circumstances, paragraph 14 of the Framework is also engaged. Where the relevant policies of

² Paragraph 47

³ Paragraph 49

⁴ APP/B3030/W/15/3006252 – Allowed with Conditions – 7 January 2016

the development plan are out-of-date, paragraph 14 of the Framework requires permission 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.

16. With regard to the above, the Framework makes it clear that the policies that it sets out, taken as a whole, constitute what sustainable development means in practice for the planning system. Paragraph 7 of the Framework sets out three dimensions of sustainable development, namely the economic, social and environmental roles. These dimensions are mutually dependent and should be jointly sought.

Social and economic role

17. The scheme would have a number of benefits relating to its contribution to housing supply and choice in Newark and Sherwood, including economic benefits during construction and support for local services after occupation, which carries significant weight in favour of the development.

The environmental role

18. Paragraph 55 of the Framework states that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Isolated homes in the countryside should be avoided unless there are special circumstances, such as an essential need for a rural worker to live permanently at or near their place of work.
19. The proposal is not isolated from the main built up area of Spalford. However, the lack of services in Spalford would require that future occupiers of the dwellings travel further afield for everyday needs such as a convenience store, a post office, schools, a place of worship, a public house, childcare, medical facilities and other community services. There is a very limited bus service from a bus stop on the A1133. However, an absence of street lighting and a continuous footpath linking the site to the bus stop, together with the very infrequent bus services, would preclude the ability to regularly meet everyday needs via public transport. Consequently, it is highly unlikely that occupiers of the proposed dwellings would regularly access services and facilities in other rural communities or urban areas on foot or via bicycle, particularly at night or in inclement weather.
20. The development would, therefore, encourage dependency on private car use to meet day to day needs. The proposal would not, of itself, generate a large number of traffic movements and some dependency upon car use is inevitable in rural locations. Nevertheless, the cumulative effect of allowing development in isolated locations would be likely to increase the amount of unsustainable journeys made. However, greater dependency on the car is inevitable in rural locations and the Framework indicates that different policies and measures will be required in different communities, noting that opportunities to maximise sustainable transport solutions will vary from urban to rural areas. Consequently, the harm arising from the provision of 2 dwellings in transport terms would be limited.
21. Paragraph 100 of the Framework states that 'Inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk, but where development is necessary, making it safe without increasing flood risk elsewhere'. The site is mostly within Flood Zone 2

according to Environment Agency Flood Zone Mapping. However, the existing site entrance from Eagle Road and the surrounding area lies within Flood Zone 3 which covers the majority of Spalford and its hinterland, including the adjacent built up area to west of the site and surrounding roads. The shape of the site means that dwellings could only be accommodated within the parts that are in Flood Zone 2. Having regard to Planning Practice Guidance (PPG), dwellings located in Flood Zone 2 are classified as 'more vulnerable'⁵ and require a Sequential Test, but not an Exception Test⁶.

22. The appellant has provided a site-specific flood risk assessment (FRA) as required by paragraph 103 of the Framework. It identifies that the main source of flooding to the site would be fluvial flooding associated with the functional floodplain of the River Trent, which with respect to Flood Zone 2 reflects land having between a 1 in 100 and 1 in 1,000 annual probability of river flooding as identified in the PPG⁷. The FRA also indicates that there are no available alternatives to the site in areas at lower risk of flooding.
23. The Council have provided no contrary evidence to the FRA and rely upon the view that the Sequential Test is not passed as there are allocated settlements and sites in Flood Zone 1 in the CS and AM&DM which take account of areas at risk of flooding. However, as per my previous findings, the housing requirement in the CS is out of date and a five-year supply of deliverable housing has not been demonstrated by the Council. It, therefore, follows there is an inability to identify sufficient sites which would act as a reasonably available alternative in areas with a lower probability of flooding to dwellings in Flood Zone 2 at both a local and district level. Accordingly, in the absence of identifiable alternatives, I find that the Sequential Test is satisfied and as such it is not possible to direct development to an area at lower risk of flooding.
24. In considering the appropriateness of the proposal with respect to flood resilience and resistance, the FRA identifies the residual risks. Furthermore, it suggests a number of means for the effective management of such risks including electrical supply points and services set above floor and ground levels, together with internal finished floor levels set no lower than 7.2m Above Ordnance Datum levels. The FRA also indicates that the small size of the development would have no effect on the floodplain, and that the amount of surface run off would not be increased due to use of permeable hardsurfacing and landscaping. Access is a reserved matter; nevertheless, there are established access points to the site through Flood Zone 3 that are in use by surrounding dwellings. Furthermore, the FRA includes necessary provision for subscription to flood warning services to assist evacuation if flooding were to occur.
25. Having regard to the above, I am satisfied that the measures proposed in the FRA, which can be secured by condition, would be sufficient to make the dwellings safe from flooding and would not increase the risk of flooding to surrounding dwellings. As the Sequential Test is satisfied and an Exception Test is not required, the proposal would not conflict with Core Policies 9 and 10 of the CS, Policy DM5 of the AM&DM or the Framework in that respect.

⁵ Planning and Flood Risk, Table 2: Flood risk vulnerability classifications, Paragraph: 066
Reference ID: 7-066-20140306, Revision date: 06 03 2014

⁶ Planning and Flood Risk, Table 3: Flood risk vulnerability and flood zone compatibility, Paragraph: 067
Reference ID: 7-067-20140306, Revision date: 06 03 2014

⁷ Planning and Flood Risk, Table 1: Flood Zones, Paragraph: 065 Reference ID: 7-065-20140306
Revision date: 06 03 2014

26. The proposed houses would not be in an isolated location in the open countryside and when viewed from Eagle Road the set back position would be surrounded on 2 sides by existing housing that it would be viewed against from public vantage points. In such circumstances, the development would not extend unacceptably into the open countryside and would be viewed as part of an expanded village envelope. Furthermore, subject to future design and layout details to be provided as part of reserved matters, the scheme could reflect the surrounding pattern of development and context. The development of the site would not have a detrimental effect on the character and appearance of the site and its surroundings, given the existing site consists of a number of buildings in poor condition and in disrepair. In principle, there would be no conflict with the design aspect of the environmental dimension of sustainability subject to appropriate details being provided as part of the reserved matters.
27. I have taken into account that the neighbouring dwellings of Barn Owl Cottage and Wisteria Cottage were subject to a previous appeal decision in 2010. However, the full circumstances of that case are not before me. Furthermore, it related to a different site and the decision was made prior to the adoption of the CS, AM&DM and the publication of the Framework. I have, therefore, determined the appeal proposal based on its own merits.

Planning Balance

28. Having regard to all of the above, I conclude that the limited environmental harm resulting from car dependency, and the limited weight given to identified conflict with Spatial Policy 3 of the CS and Policy DM8 of the AM&DM, would not be sufficient to significantly and demonstrably outweigh the benefits of the provision of 2 additional dwellings to be delivered in a location immediately adjacent to existing housing. In this respect, local services, albeit very limited, would be supported by additional residents and participation in community and social events could be increased. With regard to development in areas at risk of flooding, the Sequential Test is satisfied as based on the evidence before me, it would not be possible to direct development to areas at lower risk of flooding either in Spalford or elsewhere in Newark & Sherwood District. The Council having not demonstrated a five-year supply of deliverable housing sites is an overriding consideration in that respect. On balance, I, therefore, conclude that when assessed against the policies of the Framework as a whole, including those relating to the location and supply of housing in rural areas and areas at risk of flooding, the proposal amounts to sustainable development.

Conditions

29. I have had regard to the various planning conditions that have been suggested by the Council, where necessary I have amended the wording to ensure consistency with paragraph 206 of the Framework. In addition to the standard conditions regarding the submission and approval of reserved matters, commencement of development and plans compliance, a condition requiring the proposals for flood resilient and resistant design, and construction techniques and mitigation measures, together with the finished floor levels of the dwellings which shall be in accordance with the appellant's FRA is necessary in the interests of flood risk mitigation. In addition, the FRA makes reference to the need to ensure satisfactory means of foul and surface water drainage within the site in the absence of a nearby sewer and I consider this an appropriate requirement of the development. It is necessary to ensure the

- submission and agreement of those details prior to commencement, including an agreed timetable for implementation and maintenance thereafter.
30. A condition has been requested to remove permitted development rights for Schedule 2, Part 1, Classes A-H. The PPG⁸ advises that such conditions will rarely pass the test of necessity and should only be used in exceptional circumstances. The detailed scale, layout and appearance of the dwelling will be determined as part of the reserved matters. However, in that context and in interest of a satisfactory character and appearance in the rural setting at the edge of the settlement I am satisfied that it is reasonable and necessary that permitted development rights are removed for extensions and fenestration (Class A), roof alterations (Classes B and C), outbuildings (Class E) and hardstanding (Class F). However, there is no justification to remove permitted development rights relating to porches (Class D), chimneys, flue or soil and vent pipes (Class G) or microwave antennas (Class H) on that basis. I have, therefore, focused the restrictions accordingly in the wording of the condition.
31. Based on the evidence before me, together with observations during my site visit, a safe means of access to the site would be feasible and there is no evidence to suggest that the proposal would have a detrimental impact on highway capacity or traffic congestion. The Council have recommended that a number of conditions are imposed relating to the use of a shared driveway, surfacing, vehicular access onto Eagle Road and the position of gates. However, it is not necessary to impose the suggested conditions upon an outline application when they relate to an access which has yet to be determined and therefore, the issues could be dealt with as part of a reserved matters submission.
32. Development of the site would be capable of providing adequate separation to surrounding properties to preserve the living conditions of occupiers in terms of outlook and privacy. These are issues which could be appropriately addressed through the reserved matters relating to layout, scale, appearance and landscaping and no conditions are, therefore, required.
33. There is no evidence before me that the development would have a detrimental impact upon ecology or local biodiversity and therefore, no conditions are required in that respect.
34. The Council's Environmental Health section have confirmed that previous investigation of the site showed little evidence of contamination and therefore a condition for future site investigation is not necessary. Based on the evidence before me, I have no reason to take a different view and therefore, a condition of that nature is not imposed.

Conclusion

35. For the reasons given above, I conclude the appeal should be allowed and planning permission granted subject to the conditions set out in the attached schedule.

Gareth Wildgoose

INSPECTOR

⁸ PPG, Use of Planning Conditions, Paragraph: 017 Reference ID: 21a-017-20140306 Revision date: 06 03 2014

SCHEDULE

CONDITIONS

- 1) Details of the layout, scale, appearance, landscaping and access (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of the approval of the last of the reserved matters to be approved.
- 4) This permission relates to the site as denoted by the red line on Drawing No: TSD/S/003 dated 30 July 2015.
- 5) The reserved matters shall show the finished floor levels of the dwellings set no lower than 7.2m AOD and proposals for flood resilient and resistant design and construction techniques, and mitigation measures, which shall be in accordance with the Flood Risk Assessment submitted with the application. No dwelling shall be occupied until the agreed measures have been completed in accordance with the approved details. The works and mitigation measures shall be retained and maintained thereafter.
- 6) The development hereby permitted shall not begin until details of works for the disposal of foul and surface water have been submitted to and approved in writing by the local planning authority. The foul and surface water drainage scheme shall be carried out and thereafter managed and maintained in accordance with the approved details. Those details shall include:
 - i) a timetable for its implementation, and;
 - ii) a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public body or statutory undertaker, or any other arrangements to secure the operation of the drainage scheme throughout its lifetime.
- 7) 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), there shall be no enlargement, improvement or other alteration of the dwellings hereby permitted, including no extensions, no insertion or replacement of doors and windows, no alterations to the roof, no porches and no development within the curtilage including no garages, no ancillary curtilage buildings and no swimming pools, other than those expressly authorised by this permission.

END OF SCHEDULE OF CONDITIONS