
Appeal Decision

Site visit made on 7 February 2017

by Nigel Harrison BA (Hons) MRTPI

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

Decision date: 07th March 2017

Appeal Ref: APP/M1005/W/16/3162227

The Woodlands, land adjacent 127 Derby Road, Swanwick, Derbyshire, DE55 1AD

- 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 Malcolm Jordan Ltd against the decision of Amber Valley Borough Council.
 - The application Ref: AVA/2016/0730 dated 7 July 2016 was refused by notice dated 9 September 2016.
 - The development proposed is an outline application for a single dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was made in outline with all matters (layout, appearance, landscaping, scale and access) reserved for subsequent approval. An indicative site layout plan has been submitted which I shall treat as being for illustrative purposes only.
3. In its reason for refusal the Council says it was unable to evaluate the impact of the proposal on the site's trees, as the application was not accompanied by an Arboricultural Impact Statement. However, a full tree report was submitted as part of the appeal process, and I have taken this into account.
4. Reference has been made to the *Swanwick Neighbourhood Plan* (Submission Version 2015), which was considered at a referendum held in October 2016. However, as the number of votes cast in favour of the Plan was less than the 50% required, the Plan will not be 'made' (brought into legal force as part of the development plan). Therefore, it is not something I can take into account.

Main Issues

5. I consider the main issues in this case are:
 - i) Whether or not the proposed dwelling would be in an acceptable location having regard to the development plan and other policies;
 - ii) The effect of the proposal on the site's protected trees and the character and appearance of the area; and
 - iii) Whether the proposal is consistent with the principles of sustainable development, having regard to the provisions of the development plan and the *National Planning Policy Framework*.

Reasons

The location of the proposed development

6. The appeal site is located in the countryside outside, but on the edge of, the settlement boundary of Swanwick. The site is subject to a Tree Preservation Order which covers all the site's trees. Land to the south of the site (where the appellant operates a camping and nursery business) falls within the Green Belt. The *Amber Valley Borough Local Plan* (LP) was adopted in 2005 and reference has been made to a number of its 'saved' policies. Policy H5 says new housing will not be permitted outside a settlement boundary unless it is for a replacement dwelling, a dwelling necessary for the operation of a rural based activity, or where a countryside location is essential. Policy EN1 similarly seeks to restrict development in the countryside whilst recognising the need to accommodate development necessary to sustain the rural economy or for which a countryside location is essential. None of these stated policy 'exceptions' apply in this case.
8. Given that the site is outside the settlement boundary, the proposal is thus, 'on its face' contrary to LP Policies H5 and EN1. At the national level, paragraph 55 of the *National Planning Policy Framework* (the Framework) confirms that isolated new homes in the countryside should be avoided. In terms of its location therefore, the proposal would represent an incursion into the countryside and is contrary to local plan and national policies which seek to restrict development in such areas.
9. The Framework states that local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide five years supply of housing against their housing requirements (the 5-year land supply). Paragraph 49 of the Framework provides that housing proposals should be considered in the context of the presumption in favour of sustainable development. It further states that relevant policies for the supply of housing should not be considered up-to-date if the Council cannot demonstrate a 5-year supply of deliverable housing sites. LP Policies H5 and EN1 are clearly policies concerned with the supply of housing land.
10. The Council accepts that it currently does not have a 5-year supply of housing land, confirming in its appeal statement that the supply was approximately 3.2 years. This is a very significant shortfall, and therefore, and as the Council accepts, its policies *insofar as they concern the supply of housing* cannot be considered up-to-date, and can only be afforded limited weight at the present time. Therefore, the fact that the site is located in countryside outside the settlement boundary is not determinative in this case.

The effect on the site's trees and the character and appearance of the area

11. The site is covered by Tree Preservation Order 394/2015 (TPO), which was made on 6 November 2015 and confirmed on 12 April 2016. All trees of whatever species are included within Area A1 of the TPO (which corresponds to the appeal site).
12. The Council's Landscape Manager has raised no objections to the proposal in terms of its impact on the landscape, and as the site falls away from the highway the Council says a dwelling on the site would not be particularly prominent. However, the existing trees do have apposite visual impact on the

character of the area by virtue of the woodland character of the site, and it is to this issue which I will now turn.

13. In this regard LP Policy EN8 says permission will not be granted for development that would damage or destroy significant trees, woodland or other landscape features unless exceptional circumstances can be demonstrated to justify the proposal. This policy does not directly concern the supply of housing and is not out of date by virtue of paragraph 49 of the Framework. However, the policy's requirement for exceptional circumstances to be demonstrated sets a very high bar, and insofar as that part of the policy is concerned there is a degree of inconsistency with the Framework's policies. As such, I can only afford this policy moderate weight.
14. The submitted Tree Report¹ surveyed a total of 21 trees, although a number of these (two sycamores T16 & T18, an Ash T17, two oaks T19 & T20, and a group of hawthorns T14) appear to be outside the appeal site and area of the TPO. Of the trees within the site the majority are identified as category 'C' (unremarkable trees of little merit or impaired condition; trees present in numbers, usually growing as groups or woodlands). Two fall within category 'U' (trees which are dead or showing signs of decline). Only one tree (an oak T20) is identified within the higher category 'B', although that is outside the site boundary. No trees within the highest category 'A' were identified.
15. The proposal is in outline with all matters reserved for subsequent approval. Nonetheless, although only shown in indicative form, it is clear that the proposed access would need to pass through an area of fairly dense tree cover close to the highway. The Tree Report indicates that eight trees would need to be removed in this area (T5 –T12), predominantly crack willow, sycamore and hawthorn, and to a large extent these are the most visible in views approaching the village from the east. These trees make a positive contribution to the appearance of the street scene and locality, and I consider that the existing semi-rural character on the edge of the settlement boundary would be harmed as a result of their removal.
16. It is also proposed to fell one willow tree (T13) to permit construction of the dwelling, although other than that the Report indicates that all other numbered trees would be retained, notwithstanding the fairly dense tree cover further into the site. No reference is made to other trees which might have to be removed to accommodate the proposed dwelling. Nonetheless, trees further into the site where the dwelling would be need to be located are of lesser quality, with a much lower amenity value in terms of the contribution they make to the character and appearance of the area.
17. As part of the proposal the appellant suggests that a scheme would be submitted to promote biodiversity and long-term tree retention, together with a scheme of new tree planting on the land adjoining the southern boundary of the site. I accept that such a scheme could be secured by way of a planning condition, and that coppice management and controlled thinning and replanting could potentially be a long-term benefit in environmental terms.
18. However, I do not consider that allowing such details to be approved by condition at a later stage is necessarily appropriate or reasonable in the context of an outline application with all matters reserved. Without such information it

¹ Anderson Tree Care: Date of Survey: 21 and 28 September 2016

is not possible to make a proper assessment and balanced judgement comparing the benefits of such a management and planting scheme against the loss of trees engendered by the proposed development.

19. Furthermore, claims made in the Tree Report to the effect that “whilst some trees will have to be removed to accommodate the development and this will not leave much of a gap in the landscape” and “the driveway can be diverted around the better specimens”, are subjective, and do not persuade me that the proposal would not be harmful to the site’s trees and the character and appearance of the area.
20. Paragraph 118 of the Framework makes it clear that planning permission should be refused for development resulting in the loss or deterioration of irreplaceable habitats, including ancient woodland and the loss of aged or veteran trees unless the need for the development in that location clearly outweighs the loss. However ‘ancient woodland’ is defined as any wooded area that has been continuously wooded since 1600 AD, and ‘veteran trees’ are trees which because of their age, size or condition are of cultural, historic and nature conservation value. Even taken together I accept that the site’s trees cannot reasonably be defined as ancient woodland, and that very few of the trees could be defined as ‘veteran’. However, this does not detract from the considerable amenity value of the trees, particularly those closest to the highway that would be lost as a result of the proposal.
21. Therefore, based on the evidence before me, and without the benefit of full details of the proposed development and tree management and planting plan, I conclude that the proposal would result in the unacceptable loss of trees which make a significant contribution to the character and appearance of the area. No exceptional circumstances have been put forward to justify the proposal, and as such it conflicts with LP Policy EN8.

Whether the proposal is consistent with the principles of sustainable development

22. The appellant relies on a number of factors in support of his contention that there are reasons to justify the proposal. One of these is the lack of a 5-year housing land supply. Reliance is also placed on statement set out in Paragraph 55 of the Framework that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the viability of rural communities. Paragraph 7 goes on to confirm that there are three dimensions to sustainable development: economic, social, and environmental.
23. In terms of the economic dimension, the proposal would result in the provision of construction work and would bring additional occupants to the area to support local services. The provision of new housing would represent a social benefit, albeit a very modest one. Furthermore, Swanwick has a reasonable range of local amenities and facilities including local shops, schools, health facilities, open space and employment opportunities. The site is also close to a bus stop with frequent services to other centres with a wider range of facilities. These considerations weigh in favour of the proposal.
24. However, in terms of the environmental dimension, I have concluded that the proposal would result in harm being caused to the character and appearance of the area through the loss of many of the site’s trees. On the evidence available I cannot be satisfied that the harm caused would be mitigated or offset by new tree planting and effective woodland management. Even though I have

afforded only moderate weight to saved LP Policy EN8, I nonetheless consider that this adverse environmental harm would significantly and demonstrably outweigh any potential social and economic benefits of the appeal scheme.

Overall Conclusion

25. At the heart of the Framework is a presumption in favour of sustainable development. However, I have concluded that, on balance, the proposal would not represent sustainable development when all three dimensions referred to in the Framework are considered. For these reasons I conclude that the proposal would not be consistent with the principles of sustainable development as it conflicts with the policies of the development plan and the Framework when taken as a whole. Therefore the presumption in favour of such development does not apply.
26. For the reasons given above, and taking into account all other matters raised, I conclude that the appeal should be dismissed.

Nigel Harrison

INSPECTOR