
Appeal Decision

Site visit made on 28 February 2017

by Andrew McGlone BSc MCD MRTPI

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

Decision date: 4 April 2017

Appeal Ref: APP/F2415/W/16/3165111

Benvenuto, Leire Lane, Ashby Parva, Lutterworth, Leicestershire, LE17 5HR

- 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 Mr Tom Wightman against the decision of Harborough District Council.
 - The application Ref 15/02004/OUT, dated 28 April 2016, was refused by notice dated 29 July 2016.
 - The development proposed is seven detached two storey houses.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. During the appeal, I wrote to the parties inviting their views on the ecology survey undertaken in February 2016 and whether there is a reasonable likelihood that protected species, in particular Great Crested Newts are present on or near the site; whether there is a risk that they may be adversely affected by the proposal; whether the ecological survey for the site is considered to be sufficient, and if the proposal would potentially have an adverse impact, could this be overcome by any proposed mitigation measures that could be secured through the imposition of planning conditions, in the event that I was minded to allow the appeal. I have had regard to the parties' responses in my findings.
3. The application is in outline with all matters reserved for future consideration.

Main Issues

4. I consider the main issues to be: (i) whether the proposal would be a suitable site for development, having regard to the site's countryside location and accessibility to facilities and services; (ii) the effect of the proposal on the character and appearance of the surrounding area, including the setting of the adjacent Ashby Parva Conservation Area (APCA); and (iii) the effect of the proposal on biodiversity, with particular reference to Great Crested Newts.

Reasons

Approach to the decision

5. The Council recognise that they are currently unable to demonstrate a five-year supply of deliverable housing sites. In such circumstances paragraph 49 of the National Planning Policy Framework (the Framework) is engaged and policies
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relating to the supply of housing should be considered to be out-of-date. Policies CS5, CS9, CS11 and CS17 of the Harborough Core Strategy (Core Strategy) are cited in the reasons for refusal.

6. Core Strategy Policy CS17 and guidance within the Framework aim to focus new development in existing settlements with access to services in order to protect the countryside from unnecessary development, unless one of a small number of specified types. Thus, the policy only attracts a moderate weight. Policies CS5, CS9 and CS11 are consistent with the Framework, so I attach them full weight for decision-making purposes, but paragraph 14 of the Framework remains engaged.

Countryside location and accessibility to services and facilities

7. The appeal site lies off Leire Lane between Benvenuto and a track that extends from Leire Lane to Range Farm. Leire Lane provides vehicular and pedestrian connections to the village of Ashby Parva. The site is mainly covered in grass. On the western side of Leire Lane are a row of residential dwellings of mixed age, style and size. The site adjoins Benvenuto which is a bungalow that adjoins properties that either line or are accessed from Main Street.
8. Ashby Parva has a limited array of facilities and services to serve future occupants day-to-day requirements. Thus, future occupants of the dwellings would need to travel to the nearest settlements of Ullesthorpe and Lutterworth for facilities and services such as supermarkets, doctors, shops, hospital services, recreation and leisure facilities. I also recognise that these centres together with Magna Park offer means of employment. Ashby Parva is served by an hourly hail and ride bus service that runs between Leicester, Rugby, Lutterworth and Hinckley. Occupants could also cycle to Ullesthorpe and Lutterworth. However much of the routes to those settlements are not lit which would lessen the attractiveness of cycling during the hours of darkness. As such, I consider that future occupants would be heavily reliant on the private car on a day-to-day basis so they can use facilities and services which are located further away from Ashby Parva.
9. As a result, the proposed dwellings would lead to a cumulative effect, in terms of an increase in car based trips. This would be due to the limited range of facilities and services on offer in Ashby Parva. I consider this would result in a significant harm, even though future occupants could make use of the existing lit footway network to walk to and from the village.
10. I conclude on this issue that the proposal would result in harm by way of its unsustainable location and it would not be a suitable site for development, having regard to the site's countryside location and accessibility to facilities and services. The proposal would not comply with Core Strategy Policies CS5 (a), CS9 (a), CS11 (c (viii)) and CS17 and with paragraphs 30, 93 and 95 of the Framework; which seek development to be in the most sustainable locations well served by local services to reduce the need to travel, where people are encouraged to travel by a variety of transport modes and where people can gain convenient access to public transport services for longer journeys.

Character, appearance and the APCA

11. The APCA extends along the twisty Main Street that runs through the linear settlement of Ashby Parva. The site abuts the APCA, but as the designation

extends along the western side of Leire Lane, the appeal site does contribute towards to its setting. Main Street contains a variety of traditional buildings that are of a range of styles and age, but are generally constructed from red brick. The appeal site has an open, rural character especially on approach to the village from the north along Leire Lane. Existing mature planting provides a strong screen to buildings that line Main Street and the bungalows to the south of the appeal site. Dwellings on the western side of Leire Lane are of a mixed age, style and size, but even if some are modern, they are set back from the lane, two storey in height and use a pitched roof.

12. The proposed development could extend the built form of the village away from its traditional linear format and it would introduce development beyond the strong landscape screen that separates development on Main Street from the countryside. While, the appeal scheme is in outline with all matters reserved for future consideration and I do not have any indicative details before me, the scheme is for seven detached two storey houses. Understandably any reserved matters application would need to provide details to satisfy appearance, layout and scale.
13. However, I am not satisfied that the scale, nature and massing of the proposed development could satisfactorily integrate into the site's existing rural character and appearance, given the proposal would introduce substantial amounts of built form. Added to this, I am not convinced that the site offers sufficient scope for these to be accommodated sympathetically without appreciably altering the site's contribution to the setting of the village. While, new builds on Simons Orchard, Lammis Close and Main Street have all been referred to, I do not have any details of these schemes before me.
14. I recognise the site is adjoined or opposite built form on three sides and it does sit neatly in-between the envelope of the village, the APCA and the metalled access to Range Farm. This does not however change the site's countryside location nor did the site seem to be overgrown or an eyesore. The proposal would be particularly prominent on approach to the village, given the slight curvature in Leire Lane to the north which opens up longer range views. It would therefore change the setting of the APCA.
15. Thus, I consider the proposed development would lead to a significant harm to the character and appearance of the APCA. The result of this would be a prominent form of development which would fail to preserve or enhance the character or appearance of the APCA. With regard to paragraph 134 of the Framework the harm to the APCA would be less than substantial. Even so this still amounts to a harmful impact which adversely affects the significance of the APCA as a heritage asset. Public benefit would arise from the dwellings adding to the choice of housing available in the village for the local population and through the installation of low carbon technology and renewable energy products. However, the harm to the APCA and the site would, to which I attach considerable importance and weight, in my view, clearly outweigh these modest public benefits.
16. For these reasons, on this issue I therefore conclude that the proposal does not accord with Core Strategy Policies CS11 and CS17, Supplementary Planning Guidance Note 3 Development in Conservation Areas and paragraphs 17, 58, 132 and 134 of the Framework. Together these, among other things, seek to strictly control new development in the countryside, ensure it respects

settlement distinctiveness and secures good design that preserves or enhances the character and appearance of the conservation area.

Biodiversity

17. Great Crested Newts (GCN) are protected by law. The Framework at paragraph 109 explains that the planning system should contribute to and enhance the natural and local environment by minimising impacts on biodiversity and providing net gains in biodiversity where possible. Paragraph 118 says that when determining planning applications, local planning authorities should aim to conserve and enhance biodiversity. If significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.
18. I note the appellant's Ecological Survey explains that there are no records of GCN in the immediate area. This view runs counter to that expressed by the Council who note that GCN have previously been recorded in 2002 in ponds to the east of Dunton Lane, just over 500 metres from the site. There is also a record of GCN dating from 2013 roughly 200 metres east of the site. It is on this basis, the Council suggest GCN are in the vicinity of the appeal site. The Council also note that there are ponds within the accepted travelling distance for GCN, but to their knowledge they have not been recently surveyed.
19. Even though the Council set out that the Ecological Survey does not provide an assessment of nearby ponds, I noted that the pond to the north of the appeal site was dry. I am also mindful of the two other ponds nearby which the appellant notes as having been filled. The Council do not dispute this point. Given this, I consider that there is no reasonable likelihood of GCN's being present near to the appeal site. In terms of on the site itself, the site provides a sub-optimal habitat for GCN. I also consider a method of working could be conditioned along with protective fencing to prevent GCN from straying onto the site during construction, even if there is a cost implication to the appellant. Despite *The Leicestershire and Rutland GCN Protocol*, I am not satisfied that GCN are *likely to be impacted by a development proposal* as required by the protocol. As a result I do not consider further ecological assessments for GCN are necessary as there is not a reasonable likelihood of GCN being present.
20. For these reasons, I conclude that the proposal would not have an adverse effect on biodiversity, with particular reference to Great Crested Newts. The proposal therefore accords with paragraphs 109 and 118 of the Framework; which together aim to minimise and adequately mitigate impacts on biodiversity to halt the overall decline in biodiversity.

Planning Balance

21. In the absence of a five-year supply of deliverable housing sites, paragraph 14 of the Framework explains that where the development plan is absent, silent or relevant policies are out-of-date, granting permission unless: any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole; or specific policies in this Framework indicate development should be restricted.

22. I shall look at the three mutually dependent roles of sustainable development which are the economic, social and environmental roles. In the economic role, I attach a limited positive weight to benefits such as, the provision of construction jobs and consequential spending in the local economy by future occupants. This is due to the scale of the contribution and the facilities and services in Ashby Parva that could directly benefit.
23. Insofar as the social role, I give a moderate positive weight to the contribution the proposal would make to the borough's housing supply and to current and potential future occupants of Ashby Parva who seem to be being priced out of the village. Even though the community may seek affordable housing and the appellant is willing to enter into a Section 106 agreement to fund the provision of affordable housing, I do not have any obligation before me to take into account. While I note the appellant's suggested condition, this should only be used in exceptional circumstances where there is clear evidence that the delivery of the development would otherwise be at serious risk¹. I have no evidence before in this regard, so despite resident's points, I attach this matter no positive weight in the planning balance.
24. Also in social terms a substantial negative weight is attached to future occupants' ability to access facilities and services as well as the scheme's effect on the areas character and appearance. This is a matter which would also traverse into the environmental role. In terms of the environmental role, neutral weights are afforded to the flooding and biodiversity. However there would be a significant adverse effect on the natural and built environment, arising from the first two main issues, even with a carbon neutral development.

Other Matter

25. I have had regard to the points made concerning parking, the site's location and its surplus nature; the appellant's credibility as a businessman and as an active member of the community. However, these matters do not alter or outweigh my findings on the proposal that I have judged on its merits.

Conclusion

26. The proposal would lead to tension between the three roles of sustainable development. However, I consider the significant adverse weight that I have attached to matters in the social and environmental roles leads me to conclude that the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits which would arise from the proposal, when assessed against the policies in the Framework taken as a whole. I do not consider that the proposal would represent a sustainable form of development.
27. For the reasons set out above, I conclude that the appeal should be dismissed.

Andrew McGlone

INSPECTOR

¹ Planning Practice Guidance Paragraph: 010 Reference ID: 21a-010-20140306