
Appeal Decision

Site visit made on 28 February 2017

by I Radcliffe BSc(Hons) MRTPI MCIEH DMS

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

Decision date: 7th April 2017

Appeal Ref: APP/J0540/W/16/3164021

Land east of Camelot, First Drift, Wothorpe PE9 3JL

- 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 B Rattenbury against the decision of Peterborough City Council.
 - The application Ref 16/00556/OUT, dated 31 March 2016, was refused by notice dated 26 May 2016.
 - The development proposed is the erection of up to 3 detached dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of up to 3 detached dwellings on land east of Camelot, First Drift, Wothorpe PE9 3JL in accordance with the terms of the application, Ref 16/00556/OUT, dated 31 March 2016, subject to the conditions in the schedule at the end of this decision.

Procedural matters

2. The application was submitted in outline, with only access to be determined at this stage. I have dealt with the appeal on that basis and I have taken the illustrative plan that has been submitted into account only insofar as it is relevant to my consideration of the principle of the development on the appeal site.
3. A public footpath runs through the appeal site. The appeal scheme proposes diversion of the route, although no concurrent application for that is before me. Were the appeal to succeed, any permission could not be implemented unless, and until, a successful application for diversion of the footpath had been made. Should such an application be unsuccessful, that would have implications for the implementation of the appeal scheme. I have, however, made my decision based only on the planning merits of the case.
4. A unilateral undertaking has been submitted. It is a material consideration which I have considered as part of the appeal. Its terms are addressed in more detail within the decision.

Main Issues

5. The main issues in this appeal are;
 - whether the location of the proposed development would accord with the settlement hierarchy set out in the development plan for the area;
 - whether the site constitutes previously developed land; and,
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- the effect of the proposed development on the character and appearance of the area.

Reasons

Location of development

6. Policy CS1 of the Peterborough Core Strategy sets out a settlement hierarchy for Peterborough directing new development to the most sustainable locations and strictly controlling development in the countryside. Wothorpe, which is identified as a small village in policy CS1 of the Core Strategy, is located close to Stamford which offers a range of services and facilities that might be required by future occupiers on a day to day basis. It is therefore in an accessible location for development. The appeal site is located on the edge of the village, with a small part located within the defined village envelope and the majority of the site located next to but outside of the envelope. For planning policy purposes, this larger part of the site is therefore located within the countryside where residential development is restricted by policy CS1. As the proposed development would not fall within any of the exceptions to this policy, its location would be contrary to the development plan.

Previously developed land

7. The appeal site is private land that was associated with Thornfield, a house that previously occupied the frontage to First Drift. It formed part of the residential curtilage to Thornfield and I understand that it has never been used for any other purpose. In the absence of any substantiated evidence to the contrary, I agree with the appellant that, as a matter of fact and degree, the lawful use of the site is likely to be as a private residential garden.
8. The National Planning Policy Framework ('the Framework') is an important material consideration. A core planning principle of the Framework is to encourage the effective use of land for development by reusing land that has been previously developed, provided that it is not of high environmental value. The recent judgement in *Dartford BC v SSCLG*¹ has confirmed that private residential gardens that are not located in built up areas, for example on the edge of villages or in the open countryside, as with the appeal site, are not excluded from the definition of previously developed land. On the basis of what I have read and seen the appeal site is not of high environmental value.
9. Taking all these matters into account, I therefore conclude that the site constitutes previously developed land. Although, as the glossary to the Framework states, it should not be assumed that the whole of the curtilage should be developed. This is a consideration of significant weight in favour of the proposed development.

Character and appearance

10. The appeal site has been the subject of a number of appeals and was considered in the Peterborough Planning Policies Development Plan Document (PPDPD) examination. In terms of the countryside, only in the most recent appeal² was the character and appearance of the larger part of the site within the countryside considered. In that appeal it was described as appearing as a mixture of garden land and paddock land, which the Inspector found appeared

¹ *Dartford Borough Council v Secretary of State for Communities and Local Government* [2016] EWHC 635 (Admin)

² Ref APP/J0540/A/14/2226043

as part of the countryside. The Inspector examining the PPDPD considered that the site had open qualities and that residential development of the site would result in an abrupt transition between the village and countryside³.

11. However, I disagree with these findings. Whilst the larger part of the site within the countryside does have some open qualities, I saw that it consists of ornamental trees and bushes set within a large lawn. The site is also enclosed by housing on three sides. As a result, it is distinctly different from the open fields of pasture that neighbour the appeal site to the north and the plot has the clear appearance of garden land rather than open countryside. Consequently, although the development would be outside the settlement boundary, subject to sensitive design, it would not, necessarily, have a material adverse effect on the character and appearance of the countryside that surrounds the village, or on the transition between the two.
12. In relation to the village, Wothorpe is identified as a special character area which policy SA19 of the Peterborough Site Allocation Development Plan Document (SAPDPD) and policy PP17 of the PPDPD seek to preserve. The appeal site is located within this special character area. The special character of the village derives from low density residential development, with individually designed family houses set in large maturely landscaped gardens. Paragraph 53 of the Framework also states that local planning authorities should consider setting out policies that resist the inappropriate development of garden land. Policy SA19 of the SAPDPD is such a policy, in that it seeks to prevent the sub-division of gardens where that would adversely affect the special character area of Wothorpe.
13. The area of Wothorpe in which the appeal site is located is characterised by low density residential development with plot areas varying in size from 0.07 hectares to 0.17 hectares. In this context, the appeal site would be large enough to sub-divide into three spacious plots with an average size of 0.13 hectares. Such plots would be in keeping with the pattern of development that characterises the area.
14. The Wothorpe Village Design Statement has been referred to by an interested party. However, this document has been superseded by the supplementary planning document 'Design and Development in Selected Villages' (SPD). Its guidance relates to the scale, layout, appearance and landscaping of proposed developments which, in this case, are all matters that are reserved for later approval. On the basis of the illustrative plan, I see no reason why a scheme that would comply with the SPD could not come forward.
15. There are several trees that are subject to a tree preservation order to the north east of the site. Hedges are also present along some of its boundaries. There is no suggestion though that the protected trees would be harmed or the boundary hedges removed.
16. The public footpath that passes through the site is completely enclosed on both sides by tall hedges preventing views of the appeal site. As part of the proposal, the footpath would be diverted and these hedges would be removed. As set out at the start, diversion of the footpath is a matter that would need to be considered under other legislation. My comments are confined to the planning merits of the appeal scheme. As the hedges to the footpath are within the site, rather than along the site boundary, their removal would not be

³ Ref PINS/J0540/429/6 – Report on the Examination into Peterborough Planning Policies Local Plan

contrary to policy SA19 which seeks to protect boundary hedges. Moreover, a new hedge could be planted along the route of the diverted footpath as part of any future landscaping scheme. In terms of the trees within the site, the Council's tree officer notes that the indicative layout would not appear to involve any loss, and that the trees close to the footpath are young, or of low value, and could easily be replaced. I have no reason to disagree with that assessment.

17. In terms of access and hardstanding, on the basis of the illustrative plan, only that which is necessary would be provided and it would not dominate the site or harm existing soft landscaping. As a result, policy SA19 in this regard would also be complied with.
18. For all of these reasons, I therefore find that there is sufficient space and scope within the site to ensure that the proposed development would be sensitive to its landscape setting.
19. Taking all these matters into account, I therefore conclude that whilst the appeal site is mainly located within the countryside, on the basis that it is garden land that is enclosed on three sides by housing, the residential development proposed would not cause material harm to the character and appearance of the countryside. Furthermore, with the control that exists at reserved matters stage, the Council has sufficient control to ensure that development would complement the special character of the village. The proposal would, therefore, comply with policies CS16 and CS20 of the Core Strategy, policies PP2 and PP17 of the PPDPD and policy SA19 of the SAPDPD. Policies CS16 and CS20 of the Core Strategy and policy PP2 of the PPDPD require the protection of the character and appearance of a locality through high quality design that respects landscape character and local design features.

Other matters

20. The access to the site would be off a quiet residential spur to First Drift. Subject to the provision of satisfactory visibility splays, the Council has no objection to the proposed access on the grounds of highway safety. I have no reason to disagree with that position.
21. A properly completed unilateral undertaking has been submitted which makes provision for the repair and maintenance close to the appeal site of First Drift, an unadopted road. I have assessed the provisions of these undertakings against the tests in paragraph 204 of the Framework and the requirements of Regulation 122 and 123 of the Community Infrastructure Levy Regulations 2010 (as amended).
22. Construction traffic associated with the development is likely to result in damage and heavy wear to the road in question. A contribution is therefore necessary to put the road back in good order once construction is complete. Based upon the evidence before me, the sum of £25,000 provided for this purpose is reasonably related in scale and kind for this work. As a consequence, the contribution satisfies the tests in the Framework and accords with Regulation 122. As a specific project unique to this development Regulation 123 is also complied with. I have therefore taken into account the provision of the submitted unilateral undertaking.
23. In addition to the previous appeal already referred to, reference has been made to two other proposals for residential development on the appeal site

that were dismissed on appeal. In the 2006 decision⁴, the appeal was dismissed because the housing, which would have been located within the village envelope, did not constitute infill development. As a result, it was contrary to the Local Plan that applied at that time. In the 2010 appeal⁵, whilst the access was located within the open countryside contrary to the development plan, the determining factor in that case was also that the proposed house located within the village envelope would not have constituted infill development. The circumstances of these appeal decisions are therefore materially different to the proposal before me which I have considered on its own merits in the light of current planning policy and guidance. As a result, reference to these other decisions has not altered my findings in relation to the proposed development.

24. Reference has been made to the appeal site constituting private amenity space and that the proposal, contrary to policy PP3 of the PPDPD, would result in an unacceptable loss of such space. However, the appeal site is sufficiently large for more than adequate private amenity space to be provided for future occupants in compliance with this policy.
25. An interested party has also referred to the appeal site forming part of the setting of a listed building, The Priory. However, the position of the Council is that the appeal site is not within the setting of any listed buildings. Furthermore, The Priory is not identified on the location plan which shows buildings in the immediate vicinity of the appeal site. Based on the Council's comments, I have no reason to suppose that the proposed development would harm the special interest of any listed building.
26. In terms of biodiversity, built development could be located away from the boundary hedges and stream referred to along its north eastern edge. On the basis of the submitted evidence, I am satisfied that biodiversity would therefore not be harmed by the proposed development.
27. In relation to flood risk, the appellant states that according to the Environment Agency the site is located in an area at low risk of flooding and so, in such terms, is suitable for residential development. This has not been disputed by the Council and I have no reason to disagree with that position.

Conclusion

28. The location of the proposed development would be contrary to policy CS1 of the Core Strategy which, in accordance with the settlement hierarchy, seeks to direct new development to sustainable locations and strictly control new housing in the countryside. However, this is a sustainable location in terms of accessibility to everyday services and facilities and I have found that the proposal would not harm the character and appearance of the countryside. Moreover, as the appeal site comprises private residential garden land on the edge of the village it constitutes previously developed land which the Framework encourages the re-use of. With the plot sizes that would be achieved, and the control that exists at reserved matters stage, I am satisfied that well designed dwellings that would complement the special character of Wothorpe could be secured.
29. Whilst the Council has over a six year housing land supply, the Framework seeks to significantly boost the supply of housing and the development would

⁴ Ref APP/J0540/A/06/2024708

⁵ Ref APP/J0540/A/09/2116850

make a contribution towards doing so. There would also be social and economic benefits in terms of providing a wider variety of housing in the village, providing employment during the construction and fitting out of the dwellings, as well as increased spend in the local area by future occupiers.

30. I therefore find that whilst the location of the proposal would be contrary in principle to the development plan, there would be no resultant material harm to the character and appearance of the area, and the conflict with the development plan would be outweighed by the status of the land as previously developed land and the social and economic benefits of the appeal scheme. The appeal should therefore be allowed. In reaching this decision the views of local residents and the Parish Council have been taken into account.

Conditions

31. In the interests of certainty, otherwise than as set out in this decision and conditions, the development needs to be carried out in accordance with the approved plans in respect of those matters not reserved for subsequent approval. In order to protect the trees and hedges that contribute to the character of the village and countryside, an arboricultural protection scheme needs to be agreed and adhered to. As the site is located adjacent to the Roman road, 'Ermine Street', the potential for archaeology on the site exists. As a result, a scheme of investigation is necessary.
32. In the interests of highway safety, a Construction Method Statement governing the parking of vehicles, unloading and storage of materials and wheel washing needs to be agreed and implemented. For the same reason pedestrian visibility splays need to be provided. Given the potential for nuisance to nearby residents, control needs to be exerted on the hours of construction. Weekends and bank holidays are particularly valuable and construction noise on such days would be particularly intrusive. Other than on Saturday mornings I have therefore prevented construction on these days.
33. I have required all these matters by condition, revising the Council's suggested conditions where necessary to better reflect the requirements of Planning Practice Guidance.
34. A condition has been suggested in relation to land contamination. However, there is no suggestion that the appeal site has been anything other than garden land and, before the development of housing in the area, agricultural land. The land contamination condition is therefore unnecessary. A condition has also been suggested requiring a minimum shared access width of 5m width. Given the special character of Wothorpe, and that within policy SA19 of the SAPDPD there is a presumption against increased access and hardstandings in order to protect its special character, this condition is also unnecessary.

Ian Radcliffe

Inspector

Schedule

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place 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 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: location plan, illustrative layout plan ref AK0001_P06, but only in respect of those matters not reserved for later approval.
- 5) No development shall take place on the site until an arboricultural protection scheme has been submitted to and agreed in writing by the Local Planning Authority. The arboricultural protection scheme shall include:
 - i.) A site meeting between the site agent/architect/builder, the developers chosen arboriculturist and the Local Planning Authority's Tree Officer which shall inform the;
 - ii.) Submission of a site specific Method Statement and/or Tree Protection Plan to BS5837:2012 *Trees in relation to design demolition and construction – Recommendations* methodology. The Method Statement/Tree Protection Plan shall identify (not necessarily exclusively) the following:
 - All onsite trees, with those to be retained and those to be removed separately identified;
 - Location and specification of protective tree measures in addition to appropriate ground protection within the Root Protection Areas of all retained trees within the site;
 - Details of **all** Root Protection Area infringement during the construction and landscaping phases with details on how the impact will be minimised. This includes the location and specification of 'no dig' constructions (where applicable);
 - Details of facilitation pruning;
 - Location for access, material storage, site office, mixing of cement, welfare facilities etc.;
 - Specification of landscaping (including fencing/walls and changes in soil level) within the Root Protection Area of retained trees;
 - Details of signage to be erected within the tree protection areasThe approved scheme shall be implemented in full, strictly in accordance with the agreed details/plans and shall be retained as such for the lifetime of the construction of the development.
- 6) No development shall take place until a programme of archaeological work including a Written Scheme of Investigation and evaluation by Trial Trenching has been submitted to, and approved by, the local planning authority in writing. No development shall take place unless in complete accordance with the approved scheme. The approved scheme shall be implemented in full including any post development requirements e.g. archiving and submission of final reports.

- 7) No development shall take place until a Construction Method Statement has been submitted to, and approved in writing by the local planning authority. The Statement shall provide for:
 - i) the parking of vehicles of site operatives and visitors;
 - ii) loading and unloading of plant and materials;
 - iii) storage of plant and materials used in constructing the development;
 - iv) wheel washing facilities;The approved Construction Method Statement shall be adhered to throughout the construction period for the development.
- 8) Prior to first occupation of any dwelling on the site hereby permitted, vehicle to pedestrian visibility splays of 2m x 2m measured from and along the back of the verge, shall be provided on both sides of the access, free from any obstructions over 600mm in height and these splays shall thereafter be retained free of such obstructions.
- 9) No construction works shall take place outside the hours of 7am-7pm Monday to Friday and 8am-1pm Saturday. No works shall take place on Sundays or Bank Holidays.