

Appeal Decision

Hearing held on 3 May 2017

Site visit made on 3 May 2017

by Nick Palmer BA (Hons) BPI MRTPI

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

Decision date: 26 May 2017

Appeal Ref: APP/G2625/W/16/3163537

Land adjacent 37 Bishop Bridge Road, Norwich

- 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 Mr Mike Devine of Lidl UK GmbH against the decision of Norwich City Council.
 - The application Ref 15/00756/F, dated 22 May 2015, was refused by notice dated 18 May 2016.
 - The development proposed is demolition of existing buildings and construction of a new discount foodstore (Class A1) with associated car parking.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in the appeal are:
 - i) whether or not the proposal would accord with planning policy for development on allocated housing land with specific reference to its sustainability; and
 - ii) whether or not the proposal would compromise the ability of the Council to provide housing in accordance with its housing requirement.

Reasons

Planning Policy

3. The appeal site is on the corner of Bishop Bridge Road and Ketts Hill and is partly occupied by a car sales business, the remainder being vacant scrub land. To the east of the site is a wooded escarpment which forms part of the Thorpe Hamlet Conservation Area. The site extends onto the lower slopes of the escarpment and part of the site is within the Conservation Area. To the immediate east of the site there are residential properties and there are residential and commercial properties along the opposite frontages of both roads. To the immediate south of the site is a disused gas holder. A Hazardous Substance Consent (HSC) remains in place for that facility but National Grid intends to demolish the gas holder whereupon the HSC would be surrendered or revoked.
 4. The site together with other adjoining land on the gas holder site is allocated for residential development under policies R14 and R15 of the Norwich Site
-

Allocations and Site Specific Policies Local Plan (SASSP) (2014). Policy R15 covers the part of the site that is occupied by the car sales business which is adjacent to Ketts Hill and policy R14 covers the vacant land which is known as the 'Box and Barrel land'. The latter policy precludes development from taking place until the HSC has been revoked or surrendered or the gas holder decommissioned. National Grid has advised that it intends to dispose of that land in 2025 and that the process of demolition and associated revocation or surrender of the HSC will be likely to take place from 2021 onwards.

5. Policy DM1 of the Norwich Development Management Policies Local Plan (DMP) (2014) expects development proposals to be sustainable. The achievement of sustainable development is defined by reference to five criteria. These concern sustainable economic growth, protection and enhancement of the physical, environmental and heritage assets of the city, combating climate change and achieving carbon reduction targets, safety and security, health and well-being and promoting mixed, diverse, inclusive and equitable communities.
6. Policy DM15 of the DMP allows for development resulting in the loss of land allocated for housing but only where one of four criteria would be met. The parties agree that criterion (a) is relevant. This requires exceptional benefits to sustainability which would clearly and justifiably outweigh the loss of housing land. Those benefits must be defined in terms of the overall sustainable development criteria set out in policy DM1. The term 'exceptional' is not defined in the policy but using the ordinary dictionary definition this would require sustainability benefits to be much greater than would normally be expected under the requirements of policy DM1. The loss of allocated housing land would have a negative effect on overall sustainability and a greater degree of benefit than would normally be expected would be required to compensate for that effect.
7. The proposal would result in the creation of 20 full time equivalent jobs and in doing so would contribute to growth of the Norwich economy. I understand that the car sales business would relocate elsewhere in Norwich and the employment provided by that business would be retained. The job creation and associated economic benefits would accord with the first criterion of policy DM1. While the general economic benefit would be of significance there is no evidence before me to demonstrate that this would be exceptional in the context of the Norwich economy however.
8. The proposed green roof together with other new planting would have potential to contribute positively to biodiversity. However this must be balanced against potential loss of habitat particularly in terms of foraging areas for bats on the existing scrub land. It is a requirement of policies R14 and R15 of the SASSP and the National Planning Policy Framework (the Framework) that proposals should aim to conserve and enhance biodiversity.¹ Because enhancement is a policy requirement and because some habitat would be lost it is unlikely that the proposal would exceed the requirement of the second criterion of policy DM1 to protect and enhance environmental assets in terms of biodiversity.
9. Part of the proposed car park would extend into the Conservation Area and this would require excavation of the sloping land and construction of retaining walls. A stepped arrangement of retaining walls is proposed which would provide for landscaping and would integrate the development into the

¹ Paragraph 118 NPPF

topography and natural setting of the escarpment. Those works would be necessary to achieve appropriate mitigation however and as such would preserve rather than enhance the character and appearance of this part of the Conservation Area and its setting. This would go no further than the statutory requirement and would not be exceptional.

10. The landscaping proposals would accord with policy DM3 of the DMP and Policy 2 of the Joint Core Strategy (JCS)² which require provision of landscaping and green infrastructure. They would also accord with the second criterion of policy DM1. New planting would be provided notably along the Ketts Hill frontage to supplement the protected trees there and to the rear of the site. The green roof would integrate with the new planting. This could be said to exceed normal policy requirements but a good number of existing trees would be lost and the proposed car park would be a dominant feature. The green roof would be beneficial and would be seen from Ketts Hill because of the lower level of the building but it is unlikely that this, together with the other new planting would amount to an exceptional benefit in terms of landscape.
11. It is intended to use heat pump technology in the development to generate renewable energy using the heat from chiller units and from air source. This would contribute about 23.5% of the energy requirement, well in excess of the minimum 10% required by Policy 3 of the JCS. The proposal would provide an electric car charging point. However the development would attract customers from a significant area by car with resulting emissions and this would counteract the benefit from the generation of renewable energy to some extent. Thus while the proposal would accord with the third criterion of policy DM1 this would not be to such an extent that the benefit would be exceptional.
12. The proposal would be accessible by sustainable means to residents living locally. It would provide a local shopping facility for less mobile residents. It would also provide for increased consumer choice. By increasing opportunities for social interaction it would be in the interest of promoting mixed, diverse, inclusive and equitable communities. As such it would accord with the fourth and fifth criteria of policy DM1 in terms of health and well-being and safeguarding the interests of the elderly and vulnerable groups. The benefits in these respects and as set out above would not however be exceptional in terms of the requirement of policy DM15 of the DMP either considered individually or as a whole.
13. I have taken into account the other aspects cited as benefits by the appellants. These include the provision of a sustainable drainage scheme and enclosure of the external plant to prevent disturbance to adjacent residents. These are however requirements of planning policies³. For the reasons given I find that the proposal would not accord with policy DM15 of the DMP.

Provision of Housing

14. The Norwich Policy Area (NPA) is defined in the JCS and this covers the administrative areas of Norwich City Council (NCC) and parts of Broadland and South Norfolk District Councils. The JCS makes overall provision in Policy 4 for about 33,000 new homes to be built within the NPA between 2008 and 2026.

² Greater Norwich Development Partnership Joint Core Strategy for Broadland, Norwich and South Norfolk (2011 with amendments adopted 2014)

³ Policies DM2 and DM5 of the DMP

Policy 9 of the JCS requires allocations for a minimum of 3,000 new homes in the NCC area. The site forms part of this requirement under those policies and it is common ground between the parties that the site can accommodate about 50 dwellings.

15. Paragraph 47 of the Framework requires authorities to identify and annually update a supply of specific deliverable sites sufficient to provide five years' worth of housing against their housing requirements. Within the NPA the housing land supply is less than this at about 4.7 years. The site does not fall within the five year supply because of the constraint imposed by the adjacent gas holder and HSC and the projected time scale for removal of that apparatus. However it is anticipated that the site will be developed from 2023 onwards.
16. The site has been allocated for housing development since 1995 in the previous development plan and the appellants have referred to a lack of interest for such development. Part of the site is actively used for car sales while on the Box and Barrel land there have been two previous planning permissions for residential development. The first of those permissions⁴ was granted in 2006 for 24 apartments and the second⁵ was granted in 2010 for 19 dwellings. Although neither of those developments has come forward the presence of the gas holder either prevents this or acts as a clear constraint. In particular the second of those schemes which would have included development close to the gas holder was subject to a condition preventing development until the HSC has been revoked.
17. The sites were actively promoted for residential development in the SASSP by the then owners and the Council's evidence to the examination of the SASSP was that development of both allocations would be viable. There is no evidence to the contrary before me. The site is in a sustainable location for residential development being easily accessible to the city centre and residential occupants would not be dependent on the car for transport. National Grid has advised of its intentions with regard to demolition of the gas holder and surrender of the HSC and this provides reasonable certainty that the Box and Barrel land will be deliverable for housing within the Plan period. Development is indicated in the Annual Monitoring Report for the JCS (AMR) as likely to come forward between 2024 and 2025 on that land and earlier in the case of the land adjacent to Ketts Hill. Given that the allocations form part of a recently adopted Local Plan I give this substantial weight.
18. Policy R15 of the SASSP requires that access will be via the adjacent land allocated under policy R14 and thus development of the two allocated areas will be likely to be closely linked. However policy R15 states that car-free development would be acceptable on that site if it were to be developed on its own. This provides some flexibility in terms of the time scale for delivery.
19. Both the JCS and the SASSP state that the identified housing requirements for the NPA and the NCC area, including the allocations for 3,000 dwellings in the latter area up to 2026 are minimum requirements. This reflects the Framework's requirement for local planning authorities to boost significantly the supply of housing. The Government's White Paper⁶ stresses the importance of this by asking local authorities to be as ambitious and innovative

⁴ Ref 06/00166/F

⁵ Ref 08/00935/O

⁶ Fixing our broken housing market – Department for Communities and Local Government (February 2017)

as possible to get homes built in their area. That document states the importance of having an up-to-date plan that meets the housing requirement and ensuring that the planned homes are built out on time. The plan and the housing requirement are up-to-date and the White Paper reinforces the importance of retaining the land allocation.

20. The AMRs have indicated an anticipated over-provision of housing within both the NCC area and the NPA over the Plan period as a whole. The latest AMR shows that this over-provision would be 608 dwellings in the NCC area. This provides some confidence that the housing requirement will be met and that it may be exceeded. However the achievement of the housing requirement will depend on significantly higher rates of delivery in the latter part of the Plan period than in the last few years. Given the current shortfall and difficulty in providing a five year supply it is far from certain that the Council's housing requirement will be exceeded. In any case such an excess is a matter encouraged by national policy. The degree to which the figure is currently expected to be exceeded does not justify the release of the site.
21. The Council also pointed out that achievement of housing on the remaining part of the land allocated under policy R14 of the SASSP would depend on achievement of an access to that land which may or may not be acceptable in highway safety terms. If such an access were acceptable this would be likely to reduce the area of the remaining land that could be developed for housing. For these reasons the actual number of dwellings that could potentially be lost from the housing supply could exceed the 50 dwellings agreed as pertaining to the appeal site.
22. I conclude on this issue for the reasons given that the proposal would compromise the ability of the Council to provide housing in accordance with its housing requirement as set out in Policies 4 and 9 of the JCS and policies R14 and R15 of the SASSP. The proposal would not therefore accord with those policies.

Overall

23. I find that the proposal would generally accord with the requirements of Policy 12 of the JCS which concerns the suburban area of Norwich and seeks regeneration and renewal, improvement to townscape, retention and improvement of local jobs and services and provision of green infrastructure amongst other matters.
24. It would however conflict with a key provision of the development plan in terms of its housing requirement. Moreover I have found that the proposal would compromise the ability of the Council to achieve that requirement. Together I give very substantial weight to these considerations. For the reasons given above I give moderate weight to the benefit in terms of job creation. I give further limited weights in terms of the landscaping proposals and renewable energy generation. Those weights are not sufficient to outweigh the very substantial weight that I give to the identified harm.
25. Although the proposal would accord with the criteria of policy DM1 of the DMP in many respects the loss of housing land would weigh significantly against the sustainability requirements of that policy, particularly in terms of the promotion of communities. On this basis when considered overall the proposal would not accord with policy DM1. For this reason and because of the conflict with

policies for housing provision the proposal would not accord with the development plan considered as a whole.

26. The proposal would meet the three dimensions of sustainable development in a number of respects as set out above. The benefits to the local economy from the creation of jobs and the provision of a locally accessible shopping facility would accord with the social and economic dimensions. The development would also accord with the environmental dimension in terms of its use of renewable energy, the proposed planting including the green roof, and the sustainable drainage measures. The generation of additional traffic and consequent emissions would weigh against that dimension to some extent.
27. However the adverse implications for housing provision weigh significantly against the social and economic dimensions. The loss of allocated housing land would be likely to increase pressure for release of green field land on the edge of the urban area with consequent implications for the environmental dimension. For these reasons when considered as a whole the proposal would not be a sustainable development.

Conclusion

28. I have taken into account all other matters raised including the support that has been expressed for the proposal by local residents. However for the reasons given I conclude that the appeal should be dismissed.

Nick Palmer

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Nick Hardy	Director, GVA
Miles Drew BA (Hons) M Plan MRTPI	Consultant, GVA
Mike Devine	Lidl UK GmbH

FOR THE LOCAL PLANNING AUTHORITY:

Richard Smith BA (Hons) MA MRTPI	Senior Planning Consultant, NPS
David Parkin	Area Team Leader, Norwich City Council

INTERESTED PERSONS:

Alan Constantine	Local resident
Barry White	Site owner

DOCUMENTS SUBMITTED AT THE HEARING

- 1 Statement of Common Ground
- 2 E-mail correspondence from National Grid (submitted by both main parties)