
Appeal Decision

Site visit made on 4 April 2017

by Andrew McCormack BSc (Hons) MRTPI

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

Decision date: 20 June 2017

Appeal Ref: APP/F2415/W/16/3162892

Land east of Longbreach Road, Kibworth Beauchamp, Leicestershire LE8 0RY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to planning permission.
 - The appeal is made by Miss Helen Bareford for David Wilson Homes East Midlands against the decision of Harborough District Council.
 - The application Ref 15/01929/FUL, dated 3 December 2015, was refused by notice dated 8 June 2016.
 - The development proposed is erection of 18 dwellings and associated access on land east of Longbreach Road, Kibworth Beauchamp, Leicestershire (re-submission of application Ref: 15/00747/FUL).
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Decision

1. The appeal is allowed and planning permission is granted for the erection of 18 dwellings and associated access on land east of Longbreach Road, Leicestershire LE8 0RY in accordance with the terms of application Ref: 15/01929/FUL dated 3 December 2015 and subject to the conditions set out in the attached schedule.

Procedural Matters

2. The Council cannot demonstrate a five year housing land supply. As such, Paragraph 14 of the National Planning Policy Framework (the Framework) states that relevant housing supply policies should not be considered up to date. The presumption in favour of sustainable development means that unless material considerations indicate otherwise or any adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the Framework as a whole, planning permission should be granted. I note that the adopted Harborough Local Plan 2001 (LP) was not intended to deal with development requirements beyond 2006. As a result, the LP is considered to be time-expired and its relevant policies for the supply of housing, including Policy HS/9, cannot be considered up to date. As such, it has limited weight in my determination of this appeal.
 3. Policy CS11 of the Harborough District Core Strategy 2011 (CS) relates to the promotion of good design in development. From the evidence, there is nothing to indicate that it relates to housing supply or that it imposes strict control over development in the countryside. Therefore, I do not consider the policy to be out of date and that it accords with the core planning principle set out in the Framework that the role of the planning system is to contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes, amongst other things. As a result, I give Policy CS11 of the CS due weight.
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4. I note the progress made on the draft Kibworth Neighbourhood Plan (NP) which has recently been subject to community consultation. Notwithstanding this, from the evidence before me, the draft NP has yet to be independently examined, put to a local referendum or brought into effect. As such, it is not part of the local development plan. Therefore, in accordance with Paragraph 216 of the Framework and having regard to the draft NP's policies and proposals relevant to this case, due to its stage in the plan-making process, I give the NP moderate weight.

Main Issue

5. The main issue is the effect of the proposed development on the character and appearance of the surrounding area.

Reasons

6. The appeal site is at the end of a recent, substantial housing development which lies to the west. To the north and east are areas of public open space which form part of the Warwick Road Recreation Area which includes a skate park close to the northern boundary of the site. In addition, there is an area adjacent to the eastern boundary of the site which accommodates a balancing pond. Beyond these areas lie further residential development and a primary school. To the south is a railway line with Kibworth Beauchamp beyond which is reached by a footbridge across the railway. The topography of the site slopes upwards to the north and results in views into the appeal site and wider open areas being gained from the nearby footbridge. The area has a mix of residential development and open space which presents a suburban character and appearance rather than a semi-rural one.
7. The site is bounded by large hedgerows, is overgrown and has no public access to it. Furthermore, as I approached the site from the north west across the Warwick Road Recreation Area, I saw that it was well screened and secluded from view. When viewed from the nearby footbridge to the south, although the site is visible, it appears as a distinct and separate area from the adjacent areas of open space due to it not being well-maintained and enclosed by the mature hedgerows. As a result, I find the appeal site to be read as being adjacent to, rather than part of the areas of open space.
8. Therefore, the site is not part of an open, flowing landscape. Its distinct separation due to the substantial hedgerow boundaries means that its proposed development would have no significant impact on the function and use of the adjacent open space. Furthermore, the visual and physical distinction between the site and the surrounding area and its proximity to the recently completed development to the west leads me to the view that the proposal would have no significant adverse impact on the character and appearance of the surrounding area or the wider settlement.
9. From the evidence before me and my observations, I find the site to be of limited landscape quality. This is supported by landscape experts for both the Council and the appellant. Furthermore, it is evident to me that the characteristics of the site are not of any particular note, rare or irreplaceable and are in fact quite common and widespread. In addition, I note that the site contains no heritage, wildlife or ecological assets.
10. The appeal site was designated as Important Open Land with regard to saved Policy HS/9 of the LP and that it is considered to be part of a valued landscape as demonstrated by the representations made by the local community. However, I find that as a result of the age of the policy and taking into account the changing context and character of the surrounding area since the designation of the site, I must give only limited weight to this in reaching my decision. Furthermore, I note

that the appeal site was unsuccessfully nominated as an Asset of Community Value and that it is not part of any recreation or leisure asset. In this context, I find that the proposed development would result in limited material harm to the character and appearance of the site, the surrounding area and the settlement.

11. I acknowledge that the proposed development would likely result in an increase in the use of existing public space and that it would inevitably change the appearance of the immediate area. In addition, I note that the balancing pond to the east of the appeal site takes up a sizeable area of the open land nearby. However, the evidence before me indicates that there is a surplus of public space in the locality. As I found during my visit, the Warwick Road Recreation Area provides a significant amount of open space to the north west of the site with another open area beyond the balancing pond to the east. As such, I find that the impact of the scheme on the amount of public open space available in the area and the openness of the area would not diminish or be significantly detrimental to its quality or quantity.
12. The Council argue that the proposed development would create a pinch point and effectively split the existing open area into two spaces at the skate park. As such, the proposal would have an adverse effect on the character and appearance of the locality. Notwithstanding this, due to the existing residential development nearby and the proximity of the primary school, I find that the character of the area would not significantly change. Furthermore, the scheme would not physically impact on existing footpaths and would therefore have no adverse impact on accessibility.
13. The proposal would inevitably change the appearance of the area and the physical amount of space would be visibly reduced. I also acknowledge the intention of the draft NP to protect the site and the stage it has reached at the time of my decision. However, I find that the impact of the scheme would improve surveillance over the public open areas from dwellings. Furthermore, given its context, the scheme would result in only limited harm to the character and appearance of the settlement. The proposal would provide more housing, including affordable dwellings, which would assist the Council in meeting its current housing shortfall. These new dwellings would be in a sustainable it would support the viability of those services and facilities, provide improvements to local infrastructure and create temporary construction jobs. Therefore, having had regard to all of the above, I find that the benefits of the proposal would significantly and demonstrably outweigh the limited harm I have identified.
14. Consequently, I conclude that the proposed development would have no significant harmful effect on the character and appearance of the surrounding area or the wider settlement. It would therefore comply with Policies CS11 of the CS, Policy HS/9 of the LP and the relevant guidance within the Framework. Amongst other matters, these policies and guidance seek to ensure that development respects its locality and has no significant adverse impact on the character and appearance of the area.

Other Matters

15. I note concerns which have been raised relating to other matters not addressed within the substantive issue of the appeal. These include flood risk, drainage and noise. These concerns relate to reasons for refusal for an earlier application Ref: 15/00747/FUL on the appeal site. From what I have seen and read, such concerns appear to have been dealt with through information provided by the appellant to the satisfaction of the Lead Local Flood Authority and the Council's Environmental Health Officer. Therefore, noting that such matters did not form reasons for refusal in this case, I am satisfied that these concerns have been addressed.

16. The necessity for contributions towards affordable housing, public open space and education has been justified by evidence from the local and county councils. There would be an impact on community facilities and although not all of the projects have been specified in the submitted unilateral undertaking, I am satisfied that these would be local projects to meet the impact of the development. There is no dispute that the provisions of the legal agreement would meet the Council's policy requirements, the tests set out in Paragraph 204 of the Framework and CIL Regulations 122 and 123 relating to pooled contributions. Accordingly, I have taken the planning obligations into account in reaching my decision.

Conditions

17. I have had regard to the planning conditions that have been suggested by the Council. Where necessary, and in the interests of conciseness and enforceability, I have altered the suggested conditions to better reflect the relevant parts of the Planning Practice Guidance.
18. In addition to the standard implementation condition relating to time (1), I have imposed conditions relating to the approved plans (2) and external surface materials (3), which are necessary and reasonable in the interests of providing certainty and for reasons of character and appearance. A condition relating to the details of archaeological works on the site (4) is necessary to ensure that satisfactory archaeological investigation and recording is undertaken. Conditions relating to landscaping, trees and hedgerows (5, 6, 7, 8, 9 and 10) are necessary and reasonable in the interests of visual amenity, the protection of important landscape features and for reasons of character and appearance.
19. Furthermore, I have imposed conditions which are necessary and reasonable relating to pedestrian visibility splays (13) in the interests of pedestrian safety, car parking and turning facilities (14) for reasons of highway safety and noise mitigation measures (15) in the interests of living conditions for future and neighbouring occupiers.
20. It is necessary that the requirements of Conditions 3, 4, 5 and 7 are agreed prior to development commencing to ensure an acceptable development in respect of character and appearance and historical and archaeological interest and recording.

Conclusion

21. For the above reasons, and having had regard for all other matters raised, I conclude that the appeal should be allowed and planning permission granted, subject to the attached conditions.

Andrew McCormack

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing No: S2330_100_05 – 'Site Location Plan'; Drawing No: S10000/100/01 Rev D – 'Planning Layout Parcel 6'; Drawing No: S0000/800/01 – 'Existing Footpath Layout'; and Housing Types – Drawing Nos: P341.05-10; P206.B1.03/04; P206.01_A/02_A; H588.03/04; H497.03/04; H485.01/02; H421.03/04; E01; E06; E27 and P383.03_A/04._A.
- 3) No development shall commence until details of the materials to be used in the construction of the external surfaces of the approved dwellings and garages hereby permitted have been submitted to, and approved in writing by, the local planning authority. Thereafter, the development shall be carried out in accordance with the approved details and shall be retained as such in perpetuity.
- 4) No development shall commence until a programme of archaeological work, commencing with an initial phase of trial trenching and including any subsequent further investigation necessary, has been detailed within a Written Scheme(s) of Investigation submitted to, and approved in writing by, the local planning authority. The Scheme(s) shall include an assessment of significance and research questions and:
 - The programme and methodology of site investigation and recording (including the initial trial trenching, assessment of results and preparation of an appropriate mitigation scheme);
 - The programme for post-investigation assessment;
 - Provision to be made for analysis of the site investigation and recording;
 - Provision to be made for publication and dissemination of the analysis and records of the site investigation;
 - Provision to be made for archive deposition of the analysis and records of the site investigation;
 - Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme(s) of Investigation.

No development shall take place other than in accordance with the Written Scheme(s) of Investigation. The development shall not be occupied until the site investigation and post-investigation assessment has been completed in accordance with the programme set out in the Written Scheme(s) of Investigation and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.
- 5) No development shall commence until details of both hard and soft landscape works have been submitted to, and approved in writing by, the local planning authority. These details shall include:
 - i) indications of all existing trees and hedgerows on the land;
 - ii) details of any trees and hedgerows to be retained, together with measures for their protection in the course of the development;
 - iii) all species, planting sizes and planting densities, spread of all trees and hedgerows within or overhanging the site, in relation to the proposed buildings, roads and other works;
 - iv) finished levels and contours;
 - v) means of enclosure;
 - vi) hard surfacing materials;
 - vii) minor artefacts and structures (e.g. furniture, play equipment, refuse or other storage units, signs, lighting etc);
 - viii) retained historic or other landscape features and proposals for restoration, where relevant;
 - ix) an implementation programme, (including phasing of work where relevant).

The landscaping works shall be carried out in accordance with the approved details. The completed scheme shall be managed and maintained as such in perpetuity.

- 6) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; All shrubs, trees and hedge planting shall be maintained free from weeds and shall be protected from damage by vermin and stock. Any trees or plants which within a period of 5 years from the date of first occupation of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. All hard landscaping shall also be carried out in accordance with the approved details prior to the occupation of any part of the development or in accordance with a programme to be agreed in writing with the local planning authority.
- 7) No development shall commence until the trees on the site have been enclosed by protective fencing, in accordance with British Standard 5837 (2012): Trees in Relation to Construction. Before the fencing is erected its type and position shall be approved by the local planning authority, and after it has been erected it shall be maintained for the duration of the works and no vehicle, plant, temporary building or materials, including raising and/or lowering of ground levels shall be allowed within the protected area(s).
- 8) No retained tree shall be cut down, uprooted or destroyed, nor shall any retained tree be topped or lopped other than in accordance with the approved plans and particulars. If any retained tree is removed, uprooted or destroyed or dies, another tree shall be planted at the same place and that tree shall be of the same size and species and shall be planted at such time as may be specified in writing by the local planning authority.
- 9) The existing hedgerow(s) on site shall be retained and in no way disturbed, except for any proper management of the hedgerows as and when required.
- 10) The north-south hedgerow buffer zone (H1) shall not be incorporated into residential gardens and the boundary treatment identified on Drawing No: S0000/100/01 Rev D shall be retained.
- 11) Before first use of the development hereby permitted, the hedge / wall / fence fronting the site shall be reduced in height and maintained in perpetuity at a maximum of 0.6 metres above the level of the adjacent carriageway. Any new or replacement hedge shall not be set with, nor allowed to grow to a height exceeding 0.6 metres above the level of the adjacent carriageway and thereafter be permanently so maintained.
- 12) Before first use of the development hereby permitted, drainage shall be provided within the site such that surface water does not drain into the Public Highway and thereafter shall be so maintained.
- 13) Before first use of the development hereby permitted, 1 metre by 1 metre pedestrian visibility splays shall be provided on the Highway boundary on both sides of the accesses with nothing within those splays higher than 0.6 metres above ground level, in accordance with the current standards of the Highway Authority and thereafter be permanently so maintained.
- 14) The car parking and any turning facilities shown within the curtilage of each dwelling shall be provided hard surfaced and made available for use before the dwelling is occupied and shall thereafter be permanently so maintained.
- 15) The development hereby permitted shall be implemented in accordance with the approved mitigation measures as detailed in the Noise report by NVC dated 2 October 2015.

END OF SCHEDULE