



Appeal Decision

Site visit made on 25 June 2019

by Darren Hendley BA(Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 July 2019

Appeal Ref: APP/X2410/W/19/3226343

Land at rear of No 43 Westfield Drive, Loughborough

- 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 Swithland Homes Limited against the decision of Charnwood Borough Council.
 - The application Ref P/18/2381/2, dated 23 November 2018, was refused by notice dated 14 February 2019.
 - The development proposed is the erection of four dwellings including access and parking arrangements.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Swithland Homes Limited against Charnwood Borough Council. This application is the subject of a separate Decision.

Main Issues

3. The main issues are the effect of the proposal on (i) the provision of open space in relation to allotments; (ii) the character and appearance of the area; (iii) the living conditions of the occupiers of 43 and 49 Westfield Drive (Nos 43 and 49) by way of noise and disturbance; and (iv) biodiversity interests.

Reasons

Allotments

4. The part of the appeal site where the proposed dwellings would be located is to the rear of No 43. It contains most of this property's large enclosed rear garden and a distinct area that is largely overgrown. This area has historically contained private allotments and, at the time of my visit, there was evidence that a small part was still in this use. A grassed footpath dissects the site and so separates the enclosed garden from the allotments area.
5. This arrangement is largely repeated to the rear of the properties on Westfield Drive with the footpath providing a distinction between the rear gardens and the allotment plots albeit, like the site, a number have become overgrown. The footpath connects to a gate on nearby Radmoor Road.

6. Whilst it is fair to say that the allotments area of the site has a neglected appearance, there is not the satisfactory evidence before me to suggest there has been any other particular or subsequent use. Nor is a lack of apparent organised means of letting the allotment land an indication of a different use. A gated private access is not, in my view, especially unusual for allotments. When these considerations are taken together, in my view, this area of the site constitutes allotment land.
7. The Council's Open Spaces Assessment Study Final Report (2017) (Open Spaces Study) constitutes a robust appraisal of allotment provision in the Council area. It provides more up to date findings than the preceding 2011 assessment and it has also been used to inform the Council's recent Open Spaces Strategy 2018-2036 (Open Spaces Strategy). There is not alternative evidence before me of an equivalent substantive nature. Accordingly, the Open Spaces Study attracts significant weight in my decision.
8. The Open Spaces Study identifies that there is a shortfall of allotment land within Loughborough equating to over 9 hectares. The ward where the site lies is deemed to have an excess of provision. However, the potential demand from prospective allotment holders is unlikely to stop at ward boundaries, when the overall shortage in the town is considered. The Open Spaces Study, itself, considers the demand is best served in towns and service centres. That the site is not identified as such does not mean that it is not deemed to have this role, when its historical use and the lack of other intervening uses of the land are also considered. The same applies as regards that the site is not the subject of a similar designation under a development plan.
9. The proposal would result in the loss of the allotment land with the construction of the dwellings and the associated infrastructure on it. Hence, it would exacerbate this shortfall and, accordingly, the part of the site in question is not surplus to requirements. Nor is alternative provision proposed. With the lack of allotment land that the Open Spaces Study identifies, this shows that the site has a public value. There is also no compelling reason to differentiate between the function of private and public allotments because, in practice, they are typically let out on an individual basis.
10. The appellant has drawn my attention to an appeal decision¹ that was allowed for a residential development on land to the rear of 23 Westfield Drive. A legal agreement was submitted during that appeal which provided monies towards qualitative improvements to other allotments sites. On that basis, the Inspector found that the loss of allotment land and open space of public value was justified. As no such compensatory improvement forms part of the proposal before me, the circumstances are sufficiently different so as to not alter my views on this issue.
11. I conclude that the proposal would have an unacceptable effect on the provision of open space in relation to allotments. As such, it would not comply with Policy CS15 of the Charnwood Local Plan 2011 to 2028 Core Strategy (2015) (CS) which seeks to meet strategic open space needs, including by way of retaining open space, sport and recreation facilities unless they are clearly surplus to requirements or that replacement provision of at least equal quantity and quality will be made in a suitable location.

¹ Appeal ref: APP/X2410/A/11/2159360

12. The proposal would also conflict with the Open Spaces Strategy where it concerns maintaining an adequate supply of facilities, including allotments, highlighting shortfalls, and securing improvements and further provision.

Character and Appearance

13. Westfield Drive comprises a mix of traditional and more modern dwellings that are set out, for the most part, in a linear arrangement along each side of the road. They are positioned towards their site frontages and have expansive rear gardens. The plot sizes are fairly large. The vegetation and trees in the gardens, and in the allotment and the undeveloped land to the rear, contribute towards a pleasingly verdant character, whether they are maintained or have been left to become somewhat overgrown. In this context, they have appreciable value as landscape features.
14. The contribution the appeal site makes to this character would be eroded as the proposed dwellings would be located to the rear of the existing houses and would be well set back from the Westfield Drive frontage. There would also be some loss of the grassed garden areas and vegetation. Their plot sizes would also be smaller than those in its vicinity, and so they would also not be in keeping in this regard. Moreover, two of the proposed dwellings would be located beyond the footpath and on the allotment land. This would represent a significant incursion of built development to the rear that would be in stark contrast to the prevailing character.
15. The particular form of the individual dwellings within what are varied architectural surroundings would not be unacceptable and a number of trees on the site boundaries would be retained that would maintain a degree of tranquillity. Nevertheless, these matters would not address that the proposal would be at variance with the positioning of dwellings far closer to their site frontages along Westfield Drive and as there would still be the general loss of the green character of the site. In these regards, the proposal would not constitute achieving well-designed places for the purposes of the National Planning Policy Framework (Framework).
16. The housing development that has taken place to the rear of No 23 has not changed this prevailing character to the extent that it would justify the proposal in character and appearance terms. It does not encroach beyond the footpath, unlike the proposal before me. In addition, the related appeal decision was principally concerned with the allotments and open space of public value issue, and not character and appearance.
17. I conclude that the proposal would have an unacceptable effect on the character and appearance of the area. Accordingly, it would not comply with Policy CS2 of the CS and with 'Saved' Policy EV/1 of the Borough of Charnwood Local Plan 1991-2006 (2004) (LP), in this regard, which are concerned with development respecting and enhancing the character and appearance of the area, as well as the local environment, and for it to be compatible with the locality.

Living Conditions

18. The proposed dwellings would be accessed via a shared driveway arrangement in between Nos 43 and 49. It would pass close to the side elevation of No 43, although there are no windows on this elevation. It would be set slightly in

from the side elevation of No 45, where the boundary is defined by a close boarded fence. A window and a door on the side of No 45 faces towards the fence. The proposed shared driveway would then pass adjacent to the rear gardens of each property.

19. The appellant's noise impact assessment (NIA) concerns noise generated by traffic. It sets out to assess noise levels with regard to the guidance and criteria in British Standard 8233:2014 (BS8233) and World Health Organisation guidelines. It concludes the proposal would ably meet these limits and not give rise to significant adverse impacts of noise and disturbance. Mitigation is inherent in the findings of the assessment, due to the partial acoustic screening by way of proposed 1.8 metre brick walls running along the shared driveway.
20. The NIA states that the side facades of Nos 43 and 49 do not contain side windows. As I have set out above, this is not the case for No 49. The rear gardens of the properties themselves are also secluded and fairly quiet, and in considering such effects from noise on living conditions, this is not simply a technical exercise. Nevertheless, as the vehicular movements that would be generated by the number of proposed dwellings would be likely to be moderate, I am not persuaded this would lead to an undue level of associated noise and disturbance, and in having regard to the mitigation proposed.
21. I conclude that the proposal would not have an unacceptable effect on the living conditions of the occupiers of Nos 43 and 49, by way of noise and disturbance. Therefore, it would comply with Policy CS2 of the CS and 'Saved' Policy EV/1 of the LP, in this regard, which seek to protect the amenity of people who live or work nearby and safeguard the amenities of adjoining properties.

Biodiversity

22. The Ecological Appraisal (Appraisal) that was submitted with the planning application states that the garden area is of low intrinsic value. It also recognises that the loss of the allotments would result in the loss of some rough grassland. To this end, the appellant has indicated that mitigation would be provided by a wildlife corridor that is shown on the submitted plans, an ecological management plan, bat boxes or similar and measures to minimise light spillage. This is in addition to a pre-commencement building check and avoiding tree clearance during the bird breeding season.
23. The Council has queried the completeness and robustness of the Appraisal. However, it clearly concerns the whole site and provides a fair overall assessment of habitats and species. Matters, in particular, have been raised in respect of whether there are badgers on the site and I am mindful of the protection they are afforded as a protected species. The evidence I have on their presence, though, is far from compelling. Based on this, I am satisfied there is not a reasonable likelihood of this species being present.
24. The Appraisal is of a more limited nature in relation to the biodiversity role that the site plays as part of the allotments and the undeveloped land to the rear of the properties on Westfield Drive. It would seem to me, though, that the wildlife corridor would adequately provide for such interests. If I was minded to allow the appeal, the mitigation proposed could be dealt with through a planning condition to satisfactorily address this matter.

25. On this basis, I conclude that the proposal would not have an unacceptable effect on biodiversity interests. It would accord with Policy CS13 of the CS which is concerned with conserving and enhancing the natural environment, including that proposals are expected to consider and take account of the impacts on biodiversity.

Planning Balance

26. The proposal would contribute towards housing land supply, including the role which smaller housebuilders have in this regard. It would also have economic benefits during the construction phase, and resulting from the spend by future occupants, the New Homes Bonus and Council tax receipts. In addition, it would be in an accessible location to local services and by modes of transport other than the private car. With the size of the scheme, though, these benefits would be on a modest scale.
27. The proposal would not be unacceptable with regard to highway safety, and flood risk and drainage. As with the effect on living conditions and biodiversity interests, these considerations attract neutral weight.
28. Matters have also been raised in relation to whether or not the proposal would be acceptable in principle. My appeal decision, though, turns on the issues that are set out in the reasons for refusal. I have also been referred to the Framework's economic, social and environmental objectives. These are not, though, criteria against which every decision can or should be judged, as the Framework makes clear. I have referred to the relevant factors which they contain within my decision.
29. In relation to the adverse impacts, the proposal would have unacceptable effects on the provision of open space in relation to allotments and on the character and appearance of the area. In these respects, there would be conflict with CS Policies CS2 and CS15, and with LP 'Saved' Policy EV/1. On this basis, it would also not comply with CS Policy CS25 as it would not accord with the presumption in favour of sustainable development. These matters attract significant weight in my decision. On an overall basis, the benefits that would arise would not outweigh the harm.

Conclusion

30. I have considered all matters that have been raised, but the benefits that would arise would not outweigh the harm caused by the proposal. The proposal conflicts with the development plan as a whole and there are no material considerations to outweigh this conflict. Accordingly, the appeal should be dismissed.

Darren Hendley

INSPECTOR