
Appeal Decision

Site visit made on 16 July 2019

by S Hunt BA (Hons) MA MRTPI

Inspector appointed by the Secretary of State

Decision date: 8 August 2019

Appeal Ref: APP/G2435/W/19/3227536

Land to Rear of 21 to 63 Church Lane, Whitwick LE67 5DN

- 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 Mark Harper against the decision of North West Leicestershire District Council.
 - The application Ref 18/01206/OUT, dated 6 July 2018, was refused by notice dated 5 November 2018.
 - The development proposed is Outline planning application for 3 no. dwellings (all matters reserved except access).
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The application is in outline form with all matters reserved for future consideration except access. An illustrative site layout plan and elevations have been provided. Whilst not formally submitted for approval as part of the outline proposals, I have treated them as a useful indication as to how the site could be developed.
3. Prior to my visit I received requests to view the site from several neighbouring properties along Church Lane, and I subsequently viewed the site from their rear gardens.

Main Issues

4. The main issues are:
 - The effect of the proposals on the character and appearance of the area, with particular regard to the principle of development in this location; and
 - The effect of the proposals on biodiversity.

Reasons

Character and Appearance

5. The appeal site comprises an 'L' shaped area of rough grassland, which gently slopes down towards a dense group of trees and steep embankment at Grace

- Dieu Brook. The trees represent a significant part of the character of the site and surrounding area and are protected by a Tree Preservation Order.
6. There are mixed uses in the locality including residential dwellings immediately adjoining the site, and a range of commercial uses on the opposite side of Church Lane. No's 23 to 65 Church Lane form part of a uniform row of two storey dwellings with long rear gardens, and there is a sense of enclosure here where the dwellings and commercial buildings are close to the pavement edge. The street scene of the wider area just beyond this particular group of buildings is more diverse, with more varied building styles and plot sizes.
 7. Further along Church Lane the street takes a more spacious character around Whitwick Cemetery, with some detached dwellings and a small cul-de-sac at Cello Close. Towards North Street and Market Place there are more detached buildings in spacious grounds including a public house, a bungalow and modern apartment blocks.
 8. The illustrative plans propose three detached bungalows within a cul-de-sac highway arrangement. This would be a different layout to the existing frontage development in the immediate locality of Church Lane, but I noted on my site visit that development set back from the road is not unusual in the wider area.
 9. The site is well screened by existing buildings and trees. Whilst neighbouring occupiers on Church Lane would have a view of the development, this would be minimised by their long rear gardens and the topography of the site as it slopes downwards towards the trees. I note the Council's suggested condition regarding details of levels to be included with reserved matters, and the single storey height of the dwellings could be limited via a condition.
 10. Only limited glimpses of a single storey development would be possible within the immediate locality, thereby not resulting in any significant harm to the character and appearance of the area. It would be viewed against the backdrop of existing trees which would remain the dominant visual feature in the local area.
 11. I acknowledge the 2014 appeal decision¹ where the Inspector concluded the proposals would have a significant unacceptable impact on the character and appearance of the area, together with future pressure on protected trees and loss of privacy to neighbours' gardens. The dismissed scheme included five 2 storey dwellings extending across the full width of the site, whereas the illustrative proposals now before me are materially different to the previous scheme in a number of ways.
 12. The current proposals indicate a lower density development with fewer dwellings at single storey height. The illustrative plans show an alternative orientation and position of dwellings away from the protected trees. The area to the rear of 49-63 Church Lane, where the trees are most dense, is not proposed to be developed. Conditions could restrict the dwellings to single storey only and to the plots as shown on the illustrative plans to inform future reserved matters.
 13. Several other 'backland' developments in the locality have been put to me including a nearby housing site identified in the Strategic Housing and Economic Land Availability Assessment 2018. From the evidence supplied I am

¹ APP/G2435/A/14/2222723

unable to make a direct comparison and cannot be certain that circumstances represent a direct parallel to the appeal proposals. In any case, I have determined the appeal on its own merits and I do not dispute the principle of residential development in this location.

14. The proposals for 3 dwellings in this location would comply with North West Leicestershire Local Plan policy D1 which seeks, amongst other matters, for developments to offer a good standard of design. I have also had regard to the Council's Supplementary Planning Document (SPD) 'Good Design' notably section 14 in terms of local distinctiveness. The detailed design can be controlled through future reserved matters applications. The proposals would be broadly in accordance with the criteria set out in the policy and the SPD for the reasons set out above. In turn the proposals would also not be at odds with paragraphs 127 and 130 of the National Planning Policy Framework ('the Framework').
15. In view of the above I conclude that the proposals as shown on the illustrative plans would not result in any significant harm to the character and appearance of the area, particularly with regard to the principle of development in this location.

Biodiversity

16. The second reason for refusal refers to a lack of information to demonstrate the presence of badgers within the vicinity of the site. I have a duty to have regard to the purpose of conserving biodiversity in decision making, in considering how the proposals might affect protected species including badgers². Circular 06/2005 requires the presence of protected species and the extent to which they may be affected by the proposals to be established before the planning permission is granted, unless in exceptional circumstances.
17. Up to date evidence has not been submitted by the appellant to demonstrate that badgers are not using the site, nor is there any contrary firm evidence from the District Council. Nonetheless a reasonable likelihood of protected species being present and affected by the development has been identified by the County Council ecologist, the local badger group and by neighbouring occupiers, given the wooded habitat conditions here that may support badgers. The request from the District Council for a badger survey of the site and surrounding land reflects this reasonable likelihood.
18. The appellant's view that a survey could be conditioned and form part of the reserved matters is not in accordance with the requirements of paragraph 99 of Circular 06/2005 and therefore is not a sound basis on which to determine this appeal. The previous ecological appraisal was carried out some 5 years ago and cannot be relied upon given that badgers are mobile species. I acknowledge the County Ecologist's 'no objection in principle' comments however these relate to the retention of trees; they object to the lack of an up to date badger survey. The smaller scale of development has no bearing on the requirement for a survey.
19. There are no exceptional circumstances in the evidence before me which might negate the requirement for an up to date survey. Depending on survey results

² Informed by the Natural Environment and Rural Communities Act 2006, the Conservation of Habitats and Species Regulations 2017, and the Wildlife and Countryside Act 1981.

mitigation may be required, which could involve changes to the development proposals.

20. The proposals are therefore contrary to North West Leicestershire Local Plan policy En1 which supports proposals for development which conserve, restore or enhance the biodiversity in the district. In line with paragraph 175 of the Framework and paragraph 018 of the Natural Environment PPG, policy En1 states that where a proposal for development would result in significant harm and which cannot be avoided, mitigated or compensated for, then planning permission will be refused. There is no up to date survey or other substantive ecological evidence before me which would satisfy my duty to have regard to conserving biodiversity.

Other Matters

21. I note the range of other concerns raised by neighbouring occupiers, including effects on living conditions, protected trees, precedent for future further development, highway safety and parking issues, the greenfield status of the land and the relevance of the previous appeal decision on this site. I have concluded that the proposals are otherwise unacceptable for the reasons identified above. None of the evidence in relation to these matters leads me to a different conclusion.
22. Aims to significantly boost housing supply and to address problems of affordability are acknowledged however these benefits do not outweigh the potential ecological effects and my duty to have regard to conserving biodiversity.
23. I am mindful of the 2014 appeal decision, but I have reached my own conclusions on the basis of the evidence before me given that the proposals are notably different.

Conclusion

24. The appeal is dismissed.

S Hunt

INSPECTOR