



Appeal Decision

Site visit made on 30 April 2019

by C Beeby BA (Hons)

an Inspector appointed by the Secretary of State

Decision date: 25th September 2019

Appeal Ref: APP/P3040/W/19/3222738

Land west of dwelling known as Muffins Gap, Lombard Street, Orston NG13 9NG

- 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 and Mrs M Castanos-Price against the decision of Rushcliffe Borough Council.
 - The application Ref 18/02558/OUT, dated 31 October 2018, was refused by notice dated 21 December 2018.
 - The development proposed is the erection of a detached dwelling and associated access arrangements.
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Decision

1. The appeal is allowed and planning permission is granted for the construction of a detached dwelling and associated access arrangements at land west of dwelling known as Muffins Gap, Lombard Street, Orston NG13 9NG, in accordance with the terms of the application, Ref 18/02558/OUT dated 31 October 2018, subject to the conditions set out in the Schedule of Conditions at the end of this decision.

Application for costs

2. An application for costs was made by Mr and Mrs M Castanos-Price against Rushcliffe Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The proposal seeks outline planning permission, with all matters reserved except access. I have considered the appeal on this basis and have treated any plans in relation to the reserved matters as illustrative.
4. I note that the parties, and the parish council's objection, refer to policies from the emerging Local Plan ("the eLP"). Whilst the eLP is at an advanced stage, the Examiner's report has not yet been issued and the eLP has not yet been formally adopted by the Council. Therefore in accordance with paragraph 48 of the National Planning Policy Framework 2019 ("the Framework"), whilst I have had regard to those policies I have not attached full weight to them in my consideration of this appeal.
5. Planning permission was granted on appeal¹ for the erection of a detached two storey dwelling and garage (which I shall henceforth refer to as "the allowed development") on land to the front of the present site in March 2018. It is

¹ APP/P3040/W/17/3187630

therefore likely that the appeal scheme will form “backland” development behind the allowed development. As a result, I have determined the appeal on this basis.

Main Issues

6. The main issues are:

- Whether the proposed development would provide a suitable location for housing, having regard to the spatial strategy for the area and the accessibility of services and facilities; and
- The effect of the proposed development on the character and appearance of the area.

Reasons

Location of development

7. Policy 3 of the Rushcliffe Borough Local Plan Part 1: Core Strategy (“the CS”) sets a spatial strategy for Rushcliffe. It aims to deliver sustainable development by directing the majority of development towards urban areas. Homes in “other villages” such as Orston will be provided for solely to meet local housing needs. Paragraph 3.3.17 of the supporting text to the policy states that local needs will be delivered through small scale infill development, on exception sites, or in small scale allocations.
8. The appeal site does not form an exception site or a small scale allocation. Infill development is generally understood to mean the development of a relatively small gap between existing buildings. In comprising backland development, with open space to three sides, the proposed dwelling does not form infill development. Therefore the proposal results in conflict with Policy 3 of the CS.
9. However, the site lies at the edge of the village, which has a train station, primary school, village hall and public house. Pedestrian and cyclist access to the majority of these facilities is facilitated by a footway, street lighting and a 30 mile per hour speed restriction, and the distance is not onerous. Residents of the new dwelling would be likely to use such services. The Framework provides support for the growth of villages where this will support local services. As a result, policies within the Framework provide moderate support for the proposal’s location.
10. The proposal results in conflict with Policy 3 of the CS. Accordingly, it causes limited harm by the undermining of the Council’s housing strategy. However, I find that the development meets the sustainable development objectives of the local plan, and those within the Framework as a whole. As a result, the proposed development would provide a suitable location for housing, having regard to the spatial strategy for the area and the accessibility of services and facilities.

Character and appearance

11. Lombard Street leaves a central junction in Orston and passes through residential development of a varied age, style and building line. It then becomes an unmade track through countryside, known as Moor Lane, which

carries a public right of way. The appeal site is a paddock which lies off Moor Lane and beyond the last dwelling on the street.

12. Plot size and shape in the vicinity are diverse and these differences, together with variations in the set back, orientation and design of properties along Lombard Street, produce a diverse pattern of development. Furthermore, a number of dwellings are set back from the road around cul-de-sac or courtyard arrangements. Cul-de-sacs which extend residential development from Lombard Street by a short distance include "Maule Court" and "The Row". Dwellings are visible behind those with a street frontage from a number of public vantage points, as a result of these factors.
13. Thus, the pattern of development in the area is not sufficiently uniform that, if the appeal scheme were to form backland development, this would be so incongruous as to cause unacceptable harm to the area's character and appearance. The relatively low density of development proposed would not, additionally, be significantly different to that of surrounding development.
14. Furthermore, given the set back position of the new dwelling behind the allowed development, the level of intervening built form and the screening offered by vegetation, views of the proposal from Lombard Street would be limited. Vegetative screening would be reduced due to leaf loss in winter, however a reasonable level of screening would remain during this season given the age and density of the vegetation concerned. Whilst the proposal is likely to entail some alterations to the dense boundary hedgerow to the site, there is nothing to suggest that the provision of boundary treatments sufficient to ensure an appropriate level of screening could not be secured at the reserved matters stage.
15. Whilst layout and scale are matters reserved for later determination, in lying in front of the proposed dwelling the allowed development is likely to obscure part of it in a moderate proportion of public views of the site from Lombard Street and Moor Lane. These would be further limited by the presence of intervening built and natural form. The new dwelling would be likely to be more visible in views from the hillside public right of way which descends across fields between Station Road and Lombard Street. However, these would be at some distance and there would be no significant interruption to wider views of the surrounding countryside. Moreover, as an enclosure with mature natural boundaries which are evidently longstanding, the paddock which forms the appeal site does not allow for views through it into the distance. It consequently does not have the character of open countryside, and as a result the proposal does not form an unacceptable encroachment into such a landscape.
16. Furthermore, the current appeal site would, in the absence of permission, be likely to form part of the rear garden to the allowed development, with associated domestic paraphernalia and landscaping. Accordingly, the effect of allowing this appeal would not represent a significantly greater level of urbanisation of land which is currently undeveloped.
17. Drawing the above considerations together, I conclude that the appeal scheme would have an acceptable effect on the character and appearance of the area. Accordingly, it complies with Paragraph 127 of the Framework, which states that planning decisions should ensure that developments are sympathetic to local character and history, including the surrounding built environment.

Other Matters

18. The Orston Conservation Area ("the OCA") was designated in 1990. An Orston Conservation Area Appraisal and Management Plan ("the CAA") was completed in June 2010, and expanded the boundary of the OCA to include a number of fields, gardens, grass verges and hedgerows which were deemed to enhance Orston's rural character.
19. The OCA forms a designated heritage asset for the purpose of Paragraph 193 of the Framework. As such, I am required to give great weight to the asset's conservation when considering the effect of the proposed development on its significance. Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.
20. The OCA extends along Lombard Street almost to the edge of the paddock, and may include a small part of the site's access. However, the main area of the site does not lie within the OCA and has no boundary with it. It is separated from the OCA by land parcels to the front and side.
21. The CAA notes that the village's strong equestrian influence has resulted in the retention of a large number of paddocks on its outskirts, which are a key characteristic of the OCA. The allowed development fundamentally alters the character of the most visible part of an area of such paddock land, in front of the appeal site, to a domestic use.
22. The CAA additionally states that wide grass verges and hedgerows enhance Orston's rural character along the approaches to the village and help to soften the built environment when used as boundary treatments within the village itself. The verges and hedgerow along Moor Lane perform such a function in respect of the appeal site, and would mitigate the effect of the introduction of built form on the former paddock land. Furthermore, the new dwelling would be less prominent in views from surrounding highways than the allowed development, and consequently the effect of the change from paddock land to a domestic use of the appeal site would be less pronounced.
23. The CAA notes that open aspects on the western fringes of the village offer good vantage points for outward-looking views of the countryside around Orston. Whilst Moor Lane is not considered by the CAA to offer important or panoramic views, one such vantage point from a track off Chapel Lane is marked near the site. Hedgerow along the site's rear boundary currently marks the edge of the available view from this vantage point. The proposed development would not alter this boundary's location, and whilst there may be some limited visibility of the dwelling from the vantage point, it would be relatively well screened by intervening vegetation and would be present at some distance, and at the edge of the panoramic view. Its impact would consequently be localised and limited. In any event, landscaping could be sufficiently addressed at the reserved matters stage to mitigate any significant effects on this view.
24. I therefore conclude that the proposal would preserve the appearance of the OCA. I note that the views of the Council and the findings of the submitted Heritage Impact Assessment are similar to my own in this respect.

25. The ecological appraisal submitted with the appeal states that there are 3 records of a common toad at the site. The appraisal additionally identifies that the site has low suitability to support bats undertaking foraging and commuting activities, and it is considered possible that badgers could use the site for these activities. All 3 are protected species ("PS") under various legislation². However, a field survey did not confirm the presence of any PS at the site.
26. Circular 06/2005³ states that the presence of a PS is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat.
27. The survey was carried out in 2017, with a site walkover conducted in October 2018. The walkover found that any changes in the habitat since the survey were very limited, and did not identify any evidence of additional species having colonised the site.
28. The field survey and subsequent walkover have not confirmed the presence of any common toads at the site, and there is no information on the date or circumstances of the 3 recorded sightings. Furthermore, this is a relatively low number of occurrences. Accordingly, the evidence before me does not confirm the presence of the common toad at the site. I therefore conclude that the proposal would not have an adverse effect on the PS.
29. Nevertheless, as the proposal entails works to create a dwelling and access at the site, the previously identified habitats which may be used by bats and badgers would be affected by the proposal. Therefore, whilst the evidence does not confirm the presence of any PS at the site, the proposal may potentially have a limited adverse effect on the use of such habitats by the PS.
30. Mitigation measures proposed within the appraisal include the approval of a construction lighting scheme in order to avoid impacts on foraging and commuting bats, and various construction work measures to avoid impacts on badgers. These measures are partially in accordance with best practice guidance and are reasonable and adequate to secure the protection of any PS which may use the site. Accordingly, I am satisfied that it is necessary to secure their implementation through the imposition of conditions.
31. Additional mitigation measures which are recommended in the ecological appraisal relate to landscaping and appearance, which I have conditioned as reserved matters. These measures consequently fall for consideration at that stage.
32. Policy HOU2 of the Rushcliffe Borough Non Statutory Replacement Local Plan ("the NSLP") relates to development on unallocated sites, and its indication that development should not extend the built-up areas of settlements is relied on in part by the Council in refusing permission. The NSLP does not form part of the statutory development plan, but it is a document which is taken into account in the Council's determination of planning applications.
33. However, Policy HOU2 has not been subject to formal examination and testing. Furthermore, as it is not part of the statutory development plan, I cannot be

² The Wildlife and Countryside Act 1981, the Protection of Badgers Act 1992, the Conservation of Habitats and Species Regulations 2010

³ Circular 06/2005: Biodiversity and Geological Conservation – Statutory obligations and their impact within the planning system

certain that it is supported by appropriate and robust evidence. Accordingly, I attach only limited weight to the relevance of the provision within Policy HOU2 which concerns the extension of development in determining this appeal.

34. I acknowledge submissions from interested parties which contend that the proposal does not meet the housing needs of present and future residents of the village. However, no analysis of such needs is before me. I therefore have no evidential basis on which to draw conclusions on this matter.
35. I note the concerns of interested parties regarding the proposal's effect on the safety of users of Lombard Street and the public right of way along Moor Lane. In proposing the construction of one dwelling, the scheme represents a limited intensification of the use of the access and highway which has already been allowed on appeal. The evidence before me does not indicate that this minimal increase in traffic would cause any significant harm to highway safety, and I note that the local highway authority takes a similar view. Furthermore, the previous Inspector considered that it is not unusual for public rights of way to carry the dual purpose of a private access, and I concur with this view. As a result, this is a matter to which I attach only minimal weight.
36. Given that I have concluded that the proposal would be acceptable, I can see no reason why it would lead to harmful developments on other sites in the area.
37. I acknowledge representations regarding the personal financial benefits which the development may bring, however planning is generally concerned with land use in the public interest. It follows, therefore, that these are not matters for this appeal.

Planning Balance

38. The parties concur that the Council cannot demonstrate a five-year housing land supply ("5YHLS"). The Council states that the most recently published position, as set out in a 5YHLS assessment of 2017-2018, identifies a 3.4 year supply of deliverable housing sites.
39. Paragraph 11di) of the Framework provides, in such a case, that permission should be granted unless the application of policies in the Framework which protect areas or assets of particular importance provides a clear reason for refusing the development proposed. In this case I have applied policies in the Framework which protect the OCA as a designated heritage asset, and have found that they do not provide a clear reason for refusing the development.
40. It is therefore necessary to consider Paragraph 11dii) of the Framework. This sets out that, where a 5YHLS cannot be demonstrated, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits. In terms of benefits, there would be some economic uplift during construction through short-term employment and the purchase of building materials. Future occupiers would also contribute to the local economy. Socially, the development would add to the supply of housing. The appeal scheme entails the provision of one dwelling, and consequently will not make a significant difference to the overall 5YHLS position. However, the shortfall in supply is substantial. I therefore attach significant weight to the proposal's provision of housing as a benefit, which would be in accordance with the Government's objective of significantly

boosting the supply of homes, especially in a context where there is no 5YHLS. Occupiers would additionally be likely to participate in the local community and use relevant services and facilities.

41. Against that, the proposal causes limited harm by the undermining of the Council's housing strategy. However, Policy 3 of the CS is rendered out-of-date by the application of Paragraph 11d) of the Framework. I consequently attach limited weight to the proposal's conflict with this policy.
42. For these reasons the harm caused by the development would not significantly and demonstrably outweigh the benefits when assessed against policies in the Framework taken as a whole. Consequently, the proposal benefits from the presumption in favour of sustainable development.

Conditions

43. I have attached a condition relating to the submission of reserved matters in the interests of clarity.
44. A condition is imposed to specify the relevant drawing, as this provides certainty.
45. I have imposed Condition 5 as it is necessary in order for the development to accord with Council policy relating to design. This is a pre-commencement condition in order to prevent associated delays once development has commenced.
46. Conditions 6 and 8 are imposed in order to ensure the protection of any PS which may use the site or adjacent habitats. Condition 6 is a pre-commencement condition in order to provide appropriate protection over the full course of development.
47. Condition 7 is imposed in view of the recommendations of the internal drainage board. It is necessary for it to be a pre-commencement condition in order to provide sufficient drainage arrangements over the full course of development.
48. I have not imposed 2 conditions relating to hard and soft landscape works which were suggested by the Council. These fall within the definition of the matters reserved for subsequent approval. Accordingly, the suggested conditions do not pass the test of necessity.

Conclusion

49. For the reasons given above, I conclude that the appeal should be allowed.

C Beeby

INSPECTOR

Schedule of Conditions

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 plan: 69780-M2D-00-DR-A-05001-P01 dated 24 October 2018, but only in respect of those matters not reserved for later approval.
5. No development shall take place until full details of the finished levels, above ordnance datum, of the ground floor of the proposed building, in relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved levels.
6. Before development commences, details of the scheme of lighting to be used during construction of the development shall be submitted to, and approved in writing by the local planning authority. These shall include measures to avoid the illumination of hedgerow and trees at the site. They shall additionally include a combination of the following measures: the reduction of the height of lighting columns, the placing of lighting away from areas which are likely to be used by foraging or commuting bats, the use of directional lighting, the limiting of lighting to the minimum required, the switching off of lights when not required, and the use of white lighting, rather than yellow. Development shall be carried out in accordance with the approved details at all times.
7. Development shall not commence until drainage works for foul and surface water shall have been carried out in accordance with details which shall have been submitted to and approved in writing by the local planning authority.
8. The development shall be carried out in accordance with the additional ecological measures and/or works recommended in the submitted Ecological Appraisal (FPCR, April 2017). This shall include the following measures: night time working shall be avoided; any open trenches shall be covered overnight; open pipework shall be capped overnight; any chemicals, machinery or equipment shall be stored in a secure area overnight; engines/machinery shall be turned off when not moving/in use; the wheels of all vehicles shall be washed before leaving the site; and the storage of spoil in locations at the west side of the site shall be avoided. Development shall be carried out in accordance with these details at all times.