



Appeal Decision

Site visit made on 14 August 2019

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 1 October 2019

Appeal Ref: APP/A3010/W/19/3229661

Tangletrees, Main Street, Laneham DN22 0NG

- 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 & Mrs David Rotherham against the decision of Bassetlaw District Council.
 - The application Ref: 18/01260/OUT, dated 2 October 2018, was refused by notice dated 29 November 2018.
 - The development proposed is described as 'convert existing Chapel to a dwelling and 4 new dwellings. One next to Tangletrees and Three in vacant paddock to the rear'.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. The application was made in outline with all matters except access reserved for future determination. I have considered the appeal on this basis and I have treated the submitted proposed site plan as indicative only.
3. The emerging Bassetlaw Local Plan (LP) has been drafted. However, at this early stage, as it has yet to be examined and found to be sound, it could still be subject to change. Therefore, I attach very limited weight to the emerging Local Plan as a material consideration.

Main Issues

4. The main issues are:-
 - i) whether the appeal site is a suitable location for a dwelling having regard to the settlement strategy and the accessibility of services and facilities;
 - ii) the effect of the proposal on protected species; and
 - iii) whether the proposal represents an acceptable form of development having regard to flood risk

Reasons

Settlement strategy and the accessibility of services

5. Policy CS1 of the Bassetlaw Core Strategy & Development Management Policies DPD (2011)(CS) sets out the spatial strategy for the location of new residential development. It confirms that development will be concentrated within specified settlement boundaries as defined on the Proposals Map. Outside those areas, only development that is consistent with countryside policies will be

permitted. Laneham is identified as an 'all other settlement', however, within the emerging LP it is included as one of several North Nottinghamshire villages where dwellings will be developed during the plan period through site allocations and windfall policies. Nonetheless, as an emerging Local Plan, I can afford the policies therein only limited weight.

6. CS Policy CS9 strictly controls development outside of settlement boundaries to uses appropriate within the countryside, however, it has not been put to me that any of these exceptions apply to the proposed new build dwellings and in the absence of anything to suggest that the dwellings proposed would be consistent with countryside policies, this part of the proposal would clearly conflict with CS Policies CS1 and CS9, the requirements of which are set out above.
7. It has been put to me by the appellants that conversion of the Chapel could be dealt with independently of the proposed new build dwellings. Whilst CS Policy CS9 makes exception for conversions of existing buildings in accordance with CS Policy DM2, the latter policy has not been provided to me nor a consideration as to whether the Chapel conversion would meet its requirements. Therefore, on the evidence before me I cannot be satisfied that the conversion of the Chapel would benefit from the exception permitted by CS Policies DM2 and CS9.
8. The National Planning Policy Framework (Framework) sets out that housing in rural areas should be located where it will enhance or maintain the vitality of rural communities. Furthermore, it encourages homes with accessible services which limit the need to travel, especially by car, although it is recognised that opportunities to maximise sustainable transport solutions will vary between urban and rural areas.
9. Paragraph 78 of the Framework states that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. I saw a general lack of local facilities or services at Laneham. The Parish Council comments that there is no health provision, shop or major employer within the village. The appellant suggests that in addition to two public houses and a craft shop, bus services 190 and 190P are available. However, I have not been provided with a detailed analysis of the frequency or destination of these bus services. Whilst some journeys by bus would be an option, this would likely be discouraged if the service is infrequent. I therefore consider on the basis of the evidence before me that it is likely that the majority of journeys would be made by private car.
10. Reference has been made to examples of similar residential developments within the surrounding area¹. I have little information relating to the particular circumstances of these developments and whether the circumstances are therefore comparable to the appeal proposal. Furthermore, appeal decisions provided by the appellants in support of their case² arose at a time that the Council were unable to demonstrate a five year supply of housing land. Given that this position has changed and the Council have established the requisite supply, the policies within the development plan can be afforded full weight. As such, a comparison is of limited relevance in this instance and I have considered the appeal before me on its individual planning merits.

¹ Land adjoining Cherry Tree Farm, Falcon View and Willow Tree Farm

² APP/A3010/W/17/3187272 and APP/A3010/W/18/3194217

11. Overall, I find that the proposal is contrary to CS Policies CS1 and CS9 insofar as these policies seek to restrict development within rural settlements that have limited or no services and facilities or access to public transport and which are unsuitable for growth. In addition, the proposal conflicts with the environmental aims of the Framework.

Protected species

12. Circular 06/2005 states that the presence of a protected species is a material consideration when a proposal is being considered which would be likely to result in harm to the species or its habitat. It goes on to state that it 'is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposal, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.'
13. It also advises that ecological surveys should only be required where clearly justified, for instance, where there is a reasonable likelihood of species being present and affected by the proposal.
14. No ecological survey report was provided as part of the application. However, the appellants are willing to provide a report and state that the Council did not specifically request one during the application process. Notwithstanding this, the appeal site consists of a relatively large expanse of mown grass, trees and other vegetation together with a largely unused Chapel, the latter of which I observed at my site visit was largely sealed save for a small part of the roof which had deteriorated and was capable of being accessed from the outside. As such, I consider there is a reasonable likelihood of protected species being present and affected by the proposal.
15. Consequently, there is no compelling evidence before me to demonstrate that the proposal would have no adverse effect on any protected species and, if so, whether such an adverse effect can be overcome by any proposed mitigation measures.
16. I have considered whether a suitably worded condition could be imposed upon an outline planning permission or whether this matter may be dealt with as part of a reserved matters application. However, I do not consider these options to be acceptable given that the presence of species and any necessary mitigation measures are unknowns in the absence of suitable surveys, which for the reasons specified in Circular 06/2005 necessarily must be established before planning permission is granted. It is not appropriate to defer this consideration to reserved matters or condition.
17. Therefore, and taking a precautionary approach, I find that the proposal fails to demonstrate that protected species would not be adversely harmed. Thus, the proposal would conflict with CS Policy DM9 insofar as this policy requires development not to adversely affect or result in the loss of features of recognised importance including protected species.

Flood risk

18. The appeal site is located within Flood Zones 2 and 3a where it is identified that there is a high probability of flooding. Planning Practice Guidance (PPG) requires that a Sequential Test needs to be applied in order to justify 'more vulnerable development' such as residential development. The Framework

indicates that the aim of the Sequential Test is to steer new development to areas with the lowest probability of flooding. Development should not be permitted if there are reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding.

19. The PPG advises that the area to apply the Sequential Test across will be defined by local circumstances relating to the catchment area for the type of the development proposed. Albeit a Flood Risk Assessment (FRA) was submitted with the planning application, this did not include a consideration of the Sequential Test. Furthermore, whilst the letter of Brown & Co dated 22nd May 2019 states that there are no building plots presently available within Laneham, there is no explanation given to justify the Sequential Test being entirely limited to Laneham, nor is there any substantive evidence before me that the development is needed within Laneham to sustain the existing community nor to satisfy an identified housing need. As such, I find that there is no justification for the Sequential Test to be limited to the settlement of Laneham.
20. Given the above, I find that the appellant has not demonstrated that there are no reasonably available sites appropriate for the proposal in areas with a lower probability of flooding. The proposal therefore fails the Sequential Test and would therefore not be an acceptable form of development with regards to flood risk. As the proposal fails the Sequential Test, there is no requirement to consider whether the Exception Test is satisfied nor to consider the mitigation measures put forward by the appellants.
21. The appellants have drawn my attention to a new house built at a lower level near to the boundary of the appeal site. However, the existence of a dwelling that may be equally or more susceptible to flooding does not of itself justify the proposal.
22. The appellant comments that a Sequential Test did not seem appropriate given the inclusion of Laneham within the emerging LP as a 'village appropriate for growth'. However, in addition to my comments above, even if this designation is adopted in due course, this does not result in sites being deemed acceptable for development that would otherwise be unacceptable due to flood risk.
23. Reference has been made to a material start being commenced on a house on the appeal site which does not benefit from any flood mitigation measures. The Council have not provided any comment on this matter. Notwithstanding this, even if I were to consider that the earlier permission had been commenced, the existence of an extant permission is a material consideration and it would be open to the appellants to continue to construct that permission. However, whether they would do so if the appeal was dismissed is not clear from the evidence before me. The fact that the appellants submitted the current application may be an indication that the appellants were not satisfied with the extant permission. Certainly, I find that the two schemes are quite different. This casts doubt on whether the suggested fall-back position would materialise.
24. Moreover, I am not satisfied that the suggested fall-back provides justification for failing to consider the proposal in line with up to date planning policy. The Framework post-dates the previous permission and as such, I am required to determine the proposal in line with up to date policy and guidance.

25. Accordingly, I conclude that the proposal would be contrary to provisions of the Framework which seek to steer development to areas with the lowest risk of flooding.

Other Matters

26. The appeal site lies within the proximity of Listed Buildings, namely, Willow Tree Farmhouse, Willow Tree Cottage and Laneham War Memorial. Albeit the proposal is in outline form, given the size of the appeal site, the existing frontage consisting of hedges and intervening trees, I find that the proposal would not result in any harm to the significance of the designated heritage assets. I note that the Council have raised no concerns regarding the impact of the proposal on these designated heritage assets and, based on the evidence before me, I see no reason to take a different view.
27. Additionally, I have had regard to the appeal site consisting of a Wesleyan Chapel, a Non Designated Heritage Asset (NDHA). I have had regard to the Council's comments that the Chapel is worth preserving as part of the historic fabric of the village. The appellants suggest that a split decision could be reached to approve the conversion of the Chapel and whilst I attach moderate weight to the benefit of securing the long-term future of the NDHA, this is of itself insufficient to outweigh the adverse harm I have identified in respect of settlement strategy, flood risk and ecology.
28. The appellants state that the proposal would be capable of being designed to preserve the living conditions of neighbouring occupants. Albeit, the proposal would be positioned close to an existing livestock unit, living conditions of future occupants of the dwellings would not be adversely affected as a consequence. The proposal would preserve highway safety. However, the absence of harm is a neutral matter that weighs neither for nor against the proposal.

Conclusion

29. For the above reasons, having regard to all other matters raised, I conclude that the appeal should be dismissed.

E Brownless

INSPECTOR