
Appeal Decision

Site visit made on 3 September 2019

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th November 2019

Appeal Ref: APP/K2420/W/19/3228815

Land north of Watling Street, Nuneaton, Warwickshire

- 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 Mr Lee Brockhouse against the decision of Hinckley & Bosworth Borough Council.
 - The application Ref 18/01104/FUL, dated 30 October 2018, was refused by notice dated 20 February 2019.
 - The development proposed is erection of a dwelling, detached garage, boat house, football pitch, creation of access and associated landscaping.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The access to the site is taken from within the administrative area of Nuneaton and Bedworth Borough Council and planning permission has been granted¹ by that authority for the proposed vehicular access.

Main Issues

3. The main issues are: -
 - whether the proposed development would comply with the development plan, having regard to its policy objectives for protecting the countryside; and
 - whether there are other material considerations that would outweigh any conflict with the development plan, such as the creation of a dwelling of exceptional quality, as set out in paragraph 79 of the National Planning Policy Framework.

Reasons

Protection of the countryside

4. The appeal site is substantial in size and sited to the north of the busy A5 (Watling Street) and adjoins arable fields and grassland to the west of Hinckley and north of Nuneaton. It is accessed centrally and an unmade track leads to the centre of the southern half of the site, serving an existing storage barn. The site is enclosed by a combination of mature planting and raised ground to

¹ Ref: 035546, dated 16 May 2018.

its perimeters. The majority of the northern half of the site is occupied by a large man-made lake with a central island accessed by a bridge. The built development within the site comprises fishing lodges and a storage barn. With the exception of these buildings and the access track, the appeal site is largely undeveloped and has a landscaped appearance.

5. The site is situated within an area of countryside, as defined by Policy DM4 of the Local Plan 2006-2026 Site Allocations and Development Management Policies DPD Adopted July 2016 (SADMP). This policy suggests that to protect its intrinsic value, beauty, open character and landscape character, the countryside will first and foremost be safeguarded from unsustainable development. The policy is therefore restricted to particular types of development including meeting an identified housing need for rural workers. The appeal scheme is not for any of the types of development mentioned in the policy and therefore would conflict with it.
6. In light of the above, I conclude that the proposed development would be contrary to Policy DM4 of the SADMP.

Other material considerations – creation of a dwelling of exceptional quality

7. The proposed development is for a contemporary new dwelling and separate boathouse sited on the island and a garage to the western side of the site for four vehicles. The dwelling would be arranged in a series of pods that curve around the southern edge of the island, some projecting into the lake itself, and would incorporate six bedrooms and integral garaging for two vehicles. The existing access track would be resurfaced and extended to an arrival space encompassing the separate garaging. Detailed landscaping proposals informed by a Landscape Appraisal and Masterplan would include significant tree planting, wild grass and wildflower meadows.
8. Paragraph 79 of the National Planning Policy Framework (the Framework) outlines the approach to rural housing and makes it clear that planning decisions should avoid the development of isolated homes in the countryside except in particular circumstances, such as the creation of a dwelling of exceptional quality. The Framework provides further guidance as follows: whether the design is truly outstanding or innovative, reflecting the highest standards in architecture, and would help to raise standards of design more generally in rural areas; and would significantly enhance its immediate setting, and be sensitive to the defining characteristics of the local area. The support for design of an outstanding or innovative nature can also be found in paragraph 131 of the Framework.
9. Firstly, in terms of the innovation of the proposed dwelling, the appellant's Innovation and Sustainability Statement refers to a range of energy saving, generation and management technologies that would be utilised along with sustainable design and construction. The proposed dwelling would be designed to exceed current building regulations and target Passive House and Zero Carbon standards. Energy required to heat and cool the house and electricity required by occupants of the house and for their vehicles would be generated within the site from a series of independent renewable sources, including air, water and ground source heat pumps and photovoltaic panels.

10. The proposed dwelling would incorporate Trombe walls² and solar slabs to capture, store and radiate solar energy and would be orientated to maximise solar gain. The proposals would therefore have low energy and heating requirements. Rainwater would be harvested and foul and surface water managed through sustainable urban drainage systems, including reedbeds. Materials would be sourced from local trades and waste reduced through the design of the building and during construction.
11. Whilst the appellant has provided evidence of the likelihood of their success in the building proposed, the standards that would be employed and the use of a combination of different sustainable construction and energy saving techniques would not in themselves make the proposals innovative. The proposal's design principles, energy saving features and use of materials are largely well established. Moreover, the Framework supports the move to a low carbon future and expects new development to take account of landform, layout, building orientation, massing and landscaping to minimise energy consumption (paragraph 153).
12. Although the measures and approaches proposed are not typical in volume housing development and their use in conjunction with one another is less commonplace, their use would not be exceptional or out-of-the ordinary. In particular, the use of Trombe walls and solar slab technologies in conjunction would be positive for the construction of the development but there is nothing before me to suggest that the application of the technologies together would contribute towards improving or innovating these technologies. The appellant has also acknowledged that they could be used in the wider surrounding area, particularly relating to rural housing generally.
13. Secondly, whether the proposals would reflect the highest standards in architecture could be perceived to be subjective and the appellant has referred to the dictionary definition for 'exceptional quality'. However, the Framework advocates the use of design review panels and states that in assessing applications, local planning authorities should have regard to the outcome from these processes, including any recommendations made by design review panels. The proposals have followed a design review process so I therefore give great weight to the advice provided by Opun Design East Midlands.
14. A design review was carried out by Opun in June 2017 in respect of an earlier iteration of the scheme and the appellant subsequently amended the proposals to the scheme before me. The design ethos for the proposed development is based on the concept of lodges within a fishing village. In their last appraisal, Opun questioned the scale of the two storey elements of the proposals as they were considered to add a layer of complexity to the design and would not be wholly in keeping with the simplicity of form and design associated with the concept of a fishing village.
15. Whilst the proposals clearly set out from a specific premise which links to the character of the site, they appear to have departed from that premise. In particular, the proposed doubly curved grass roofs, part earth sheltered ground floor area, timber decking oversailing the lake and largely symmetrical layout and balance of solids and voids would result in a bold and contemporary architectural solution rather than the more simplistic form of a fishing village. Nonetheless, setting this aside and considering the architectural merits of the

² Trombe walls passively heat buildings by absorbing sunlight and heat which is thermally stored

- proposed dwelling, it would be of an interesting composition and appearance that would clearly set it apart from nearby development. The proposed dwelling would therefore not be without merit. However, the Framework sets a high bar in relation to design. Whilst the proposals would be of a high quality, they would not amount to design of an exceptional quality that would be truly outstanding, reflecting the highest standards in architecture. Similarly, as the proposals would not execute the design premise that informed the original concept discussed with Opun, it could not be said to advocate a sensitive approach to the defining characteristics of either the site or its wider setting in the local area.
16. It has been put to me that the appellant may publish the details of the design and has ambitions to use the dwelling as an education venue for those working in sustainable construction or from local higher education establishments. Taken together, it is suggested that these would provide a larger audience chance to view the design. However, I have not been provided with any substantive evidence as to how the public use of the dwelling would work in practice or the extent to which partnerships have been explored within the industry or in education. On this basis, in my view the proposal would not serve as a model, or increase consciousness to a point where wider standards of design would be improved as a result of it.
17. The impact of the proposed access, and other elements of the appeal scheme proposed alongside the dwelling, would be modest and the proposed landscaping scheme would offer significant enhancements to the immediate setting and ecological value of the site. However, as the planting could be undertaken outside the scope of the appeal scheme it would not be a direct enhancement of the immediate setting by the proposed development. Nonetheless, as there would be an absence of any harm in respect of these matters, this would not justify the proposed development as the bar has not been met for exceptional design quality.
18. I have also taken into account that the appellant has scored the proposed development highly in terms of the Building for Life criteria, which are endorsed by paragraph 129 of the Framework. This suggests that the criteria are particularly important for significant projects such as large-scale housing and mixed-use developments. Nonetheless, I have assessed the individual merits of the appeal proposal based on the relevant planning policies and other evidence before me.
19. For the above reasons, I conclude that the proposed development would not be of exceptional quality, and would therefore fail to accord with paragraph 79 of the Framework. Therefore, the proposed development would be considered as conflicting with the policies of the development plan.

Planning Balance

20. Paragraph 47 of the Framework states that planning law requires that applications for planning permission be determined in accordance with the development plan, unless material considerations indicate otherwise. The Framework is a material consideration.
21. The development plan for the area comprises the Local Development Framework Core Strategy (Adopted December 2009) and the SADMP, both which predate the current Framework. However, Paragraph 213 of the

Framework makes it clear that existing policies should not be considered out-of-date simply because they were adopted or made prior to the publication of the Framework. Due weight should be given to them according to their consistency with the Framework.

22. The Council have confirmed that their available supply in the Borough does not meet the five years required by the Framework (paragraph 73). In light of this, the current development plan policies most important for determining the application are out-of-date, including for the supply of housing. In such circumstances the normal planning balance does not apply, and the 'tilted balance' is engaged. This requires that permission should be granted, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole (paragraph 11(d)(ii) of the Framework).
23. In the context of Policy DM4 of the SADMP, a policy referring to development outside of settlement boundaries, in isolation of other considerations, would not be wholly aligned with the more flexible and balanced approach implicit in the objectives outlined in the Framework. However, the policy does not fundamentally undermine the continued relevance of this approach. Moreover, the approach in the policy is to protect the intrinsic value, beauty, open character and landscape character of the countryside from unsustainable development. This differs only slightly from the aim in the Framework to recognise the intrinsic character and beauty of the countryside. There is therefore still a clear rationale for development boundaries in order to protect the countryside while focusing growth within designated settlements. Accordingly, I afford the identified conflict of the policy with the Framework limited weight, so the policy should be afforded moderate weight.
24. The proposals would bring about economic and social sustainability benefits arising from employment and procurement of materials during the construction period, the occupants of which would be able to utilise electric vehicles to access and support facilities and services. Nevertheless, the scale of the development would determine that these benefits would not be significant in terms of their overall contribution to sustaining facilities and services or enhancing social cohesion. In addition, there would be social benefits to the appellant and his family from the occupation of a dwelling with individual health facilities, such as gym and pool, and a building that is adaptable to change. However, these benefits would not extend to the community. The proposals would provide environmental sustainability benefits arising from the enhancement of the biodiversity and ecology of the site through new planting and the creation of habitat. The materials extracted from the site to build the development will also be re-used during construction and other waste will be minimised. Nonetheless, much of that which is proposed would not be unique to this site and could be found in most new developments. As such, I afford these benefits limited weight.
25. Overall, the adverse impacts of the proposal are matters of significant weight against the grant of planning permission and the absence of harm in respect of other planning issues relevant to the consideration of the development is of neutral weight.
26. Notwithstanding the fact that the Council indicates that it does not have five years housing land supply, the proposed development would not amount to

sustainable development. The adverse impacts identified would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. This does not indicate the proposal should be determined other than in accordance with the development plan.

Conclusion

27. The proposed development would be contrary to the development plan and there are no other considerations which outweigh this finding. Accordingly, for the reasons given, the appeal does not succeed.

Paul Thompson

INSPECTOR