
Appeal Decision

Site visit made on 18 February 2020

by Paul Singleton BSc MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 February 2020

Appeal Ref: APP/P3040/W/19/3241494

**Land North East of Hill View, Top Green, Upper Broughton,
Nottinghamshire LE14 3BJ**

- 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 Alan Le-Blond against the decision of Rushcliffe Borough Council.
 - The application Ref 19/01938/OUT, dated 24 July 2019, was refused by notice dated 9 October 2019.
 - The development proposed is outline application with all matters reserved for erection of a new dwelling.
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - a) whether the site is an appropriate location for the development proposed;
 - b) the effect on the form and setting of Upper Broughton;
 - c) the effect on the character and appearance of the Conservation Area and the setting of the other nearby heritage assets; and
 - d) the potential effect on existing trees and the biodiversity of the site.

Procedural Matters

3. The application sought outline permission with all detailed matters reserved for subsequent approval. I have considered the appeal on this basis.
4. The development plan for the area is comprised of the Rushcliffe Local Plan Part 1:Core Strategy (CS) and the Rushcliffe Local Plan Part 2:Land and Planning Policies (LPP2). One of the policies referred to in the first reason for refusal is CS Policy 3. This states that in 'other' settlements (such as Upper Broughton), housing development will meet local needs only and will be delivered through small scale infill development or on exception sites.
5. The Council's decision to refuse planning permission, in October 2019, was made at a time when it was unable to demonstrate a 5 year Housing Land

Supply (HLS) as required by the National Planning Policy Framework (Framework). In those circumstances, and in accordance with paragraph 11 d) of the Framework, the Council accepted that CS Policy 3 should be regarded as being out-of-date. However, the Council concluded that the 'tilted balance' in favour of a grant of permission set out in paragraph 11 should not be applied because of the alleged harm to heritage assets; that harm engaging other Framework policies of the type referred to in paragraph 11 d) i and Footnote 7.

6. In its appeal statement, the Council has advised that it now has a HLS of approximately 6 years and that there are no grounds for applying the tilted balance. As the tilted balance was not applied by the Council in reaching its decision, I do not consider this change in circumstances to be of major significance to my consideration of the appeal. The appellant has had the opportunity to comment on the Council's Statement and I see no disadvantage to him in my proceeding on the understanding that the Council is now able to demonstrate a 5 year HLS.

Reasons

Whether an appropriate location

7. CS Policy 3 sets out a Spatial Strategy for the Borough which seeks to focus new housing in main towns and larger villages. In 'other settlements' not identified for growth, Parts 1 and 2 b) of Policy 3 stipulate that new housing should be for local needs only. Paragraph 3.3.17 of the justification to Policy 3 states that local needs housing will be delivered through small scale infill development or on exception sites. Paragraph 3.10 of LPP2 states that development in such villages will be limited to small scale infill development, exception sites or the allocation of land through neighbourhood plans. Small scale infill development is defined as development of small gaps within the existing built fabric of the village or of previously developed sites whose development would not have a harmful impact on the pattern or character of the area.
8. The appellant argues that the proposal might meet local needs but has submitted no evidence of local housing need, either in terms of numbers or house type and size, to support that assertion. The site abuts the residential boundary of Hill View but there are no buildings on the north side of Top Green to the east of the appeal site. The site cannot, therefore, be regarded as an infill site and, on any reasonable assessment, must be considered to lie outside of the existing built fabric of the village notwithstanding that there are buildings opposite on the south side of the road. In support of this conclusion I note that the site lies outside of the development limits as defined in the submission draft of the Upper Broughton Neighbourhood Development Plan.
9. The appellant's assertion that the site comprises a garden and previously developed land is, in my view, without merit. I note that a similar claim was made in respect of two earlier appeals¹ relating the site and that neither of the Inspectors was persuaded that there was sufficient evidence to confirm that this was the case. No additional evidence has been submitted in support of the current appeal and I saw nothing on my site visit that would lead me to conclude that the site is currently or has recently been used as a garden. I also

¹ APP/P3040/A/05/1178916 dated July 2005 & APP/P3040/A/07/2059165 dated 16 June 2008

note the representation from a local resident that contests the appellant's claim as to the land's use as a garden.

10. For these reasons the proposal would not provide for local needs in accordance with CS Policy 3 and, accordingly, conflicts with that policy and with paragraph 3.10 of LPP2. Given that the Council is able to demonstrate a 5 year HLS in accordance with the Framework, I give full weight to that conflict.

Effect on form and setting of Upper Broughton

11. There is a low wall to part of the site frontage, but this is largely obscured by the tall holly hedge that extends along the site frontage and screens the site from view. There is a small gap of about 3 metres (m) which accommodates an existing informal access. In visual terms the hedge reads as part of a continuous green frontage extending along the north side of Top Green from Hill View and around the bend into the A606, providing a semi-rural character to this section of Top Green. This frontage helps to frame the formal 'green' that gives the road its name as the main focal point in views both from the west and from the A606.
12. Due to its height and siting on top of a raised bank this continuous, green frontage is prominent in view when travelling east on Top Green and is readily apparent when entering Top Green from the A606. Together with the absence of buildings on the north side of the road, this continuous vegetation helps to define the edge of the settlement when entering from or leaving the village via Top Green and makes a positive contribution to the rural setting of Upper Broughton. Having regard to the Inspectors' findings in the previous appeal decisions, I consider that the site would make a still greater contribution to that setting if the hedge was reduced in height such as to allow views of the open land behind the frontage planting.
13. No details of the proposed means of access have been provided although the site plan suggests that this might be taken at the eastern end of the site. In my assessment a substantial section of the existing hedge would need to be removed to achieve a satisfactory standard of access and the requisite visibility splays. This would result in a significant reduction in the contribution that the site makes to the distinctive character of this part of Top Green and the rural setting of the village. The appellant suggests that the proposed dwelling could be 'bedded' into the profile of the land. However, the site is elevated above the road and, in the absence of any detailed proposals, I cannot be certain that the new building would not represent an unwelcome visual intrusion in a prominent location within the village.
14. The proposal would have a significant adverse effect on the positive contribution that site makes to the distinctive character of Top Green and to the rural setting and attractive form of Upper Broughton. Therefore, it conflicts with CS Policy 10, which seeks that proposals should make a positive contribution to the public realm and create an attractive environment.

Effect on heritage assets

15. The Upper Broughton Conservation Area is a village-wide designation covering all of the built area and some of the open land around its edges, including the appeal site, the adjacent woodland and undeveloped land on the east side of the A606. The Townscape Appraisal identifies the site and these other areas of

undeveloped land as 'positive open spaces' which add to the special character and appearance of the Conservation Area. I agree with that assessment.

16. These areas of open land and the vegetation to their roadside boundaries help to frame the village green as the main focal point in views along Top Green and from the A606 and to announce the green as the point of arrival in Upper Broughton at this end of the village. The greens at Top and Bottom Green are of clear significance in defining the special character and appearance of the village. The significance of Top Green is enhanced by its relationship to the Grade II listed Broughton House and the row of buildings immediately to the west which are identified in the Townscape Appraisal as 'Key Unlisted Buildings'. These form an interesting and attractive group in this part of the Conservation Area.
17. Notwithstanding the extent of the roadside screening, the appeal site forms a visually important open space within the Conservation Area. Its development and the associated works to form a vehicular access would have a detrimental effect on the positive contribution that it makes and would fail to preserve the character and appearance of the Conservation Area.
18. The appeal site falls within the setting of Broughton House and of the former Coach House and adjacent cottages which should, in my view, be treated as non-designated assets given their identification as key buildings within the Conservation Area. Due to the absence of built development the site makes a modest but positive contribution to that setting. Although a new building could possibly be sited and designed so as to minimise harm, this cannot be guaranteed on the basis of the information submitted. In any event, the construction of a vehicular access and associated removal of vegetation would, itself, materially reduce the contribution which the site makes to that setting.
19. I note the appellant's reference to 'suburban' dwellings having been developed to the west of Broughton House. In my assessment these do not have the same visual or spatial relationship with the listed building and I do not consider that their development has not created any precedent as to the acceptability of new built form on the appeal site.
20. The proposal conflicts with CS Policy 11 which seeks to protect heritage assets and their settings. The harm to the significance of the designated heritage assets comprised in the Conservation Area and listed building would be less than substantial and, in accordance with paragraph 196 of the Framework, that harm should be weighed against the public benefits of the proposal. Paragraph 197 requires that the effect on the significance of any non-designated heritage asset should also be taken into account in determining the appeal.
21. In circumstances where the Council is able to demonstrate a 5 year HLS the public benefit of providing a single new dwelling is very modest. Having regard to the statutory duties under sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 in respect of the desirability of preserving the setting and significance of designated assets and the character and appearance of conservation areas, I find that this limited benefit would not outweigh the harm to the heritage assets.

Effect on trees and biodiversity

22. The boundary hedge and trees within the site are of amenity value, forming

part of its green character and contributing to the setting of the village. The site's shape and topography could make it difficult to accommodate the proposal without removing a significant proportion of those trees. It is, therefore, necessary for a tree survey to be carried out so that the likely effect of the proposal can properly be assessed.

23. In addition to the trees there is extensive undergrowth across much of the site. Given the extent of the vegetation and the site's location adjacent to woodland and open countryside, there is clear potential for the presence of flora and fauna of biodiversity value. An ecological survey is required to confirm the site's biodiversity value and enable a judgment to be made as to what, if any, harm might be caused as a result of its development.
24. I agree with the Council that these surveys are required before outline planning permission is granted. In the absence of such information I am unable to conclude that the proposal would not have an unacceptable effect on the trees or features of ecological value. The proposal does not, therefore, comply with CS Policy 17, in respect of the protection of biodiversity, or with LPP2 Policies 37 and 38 which are concerned with the protection of trees and of non-designated biodiversity assets.

Other Matters

25. I note the appellant's assertion that concerns about trees and biodiversity were not raised during his discussions with the Council. However, I have to consider the appeal on the basis of the reasons for refusal and the information that has been submitted to me.

Conclusion

26. For the reasons set out above I conclude that the appeal should fail.

Paul Singleton

INSPECTOR