
Appeal Decision

Site visit made on 20 May 2020

by John Morrison BA (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 June 2020

Appeal Ref: APP/P3040/W/19/3243178
Newbold, Hall Lane, Kinoulton NG12 3EF

- 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 Eggleston against the decision of Rushcliffe Borough Council.
 - The application Ref 19/01018/OUT, dated 23 April 2019, was refused by notice dated 14 June 2019.
 - The development proposed is described as 'outline planning permission for 1No dwelling with all matters reserved.'
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Since the determination of the planning application and prior to my consideration of this appeal, the Council has adopted part 2 of their Local Plan (LPP2)¹. The main parties have drawn my attention to this in their statements. The evidence refers to the relevant policies from LPP2 as well as what they seek to achieve. In determining the appeal, I have had regard to the adopted development plan at the time which, for clarity, is made up of LPP1² and LPP2.

Main Issues

3. There are two main issues. These are the principle of the appeal scheme having regard to the development plan and sustainable patterns of new development and its effect on the character and appearance of the area.

Reasons

Principle of Development

4. Policy 3 of LPP1 explains that new development will be directed, in a hierarchical manner, to the main built up areas of Nottingham and identified key settlements. This is in order to encourage sustainable patterns of development. Specifically directing it to those settlements that have ready access to a range of services on which occupiers would rely for day to day living. In other settlements, Newton and former RAF Newton aside, development will be for local needs only.

¹ Rushcliffe Local Plan Part 2: Land and Planning Policies October 2019

² Rushcliffe Local Plan Part 1: Core Strategy December 2014

5. Kinoulton is one of these 'other settlements' for which the development plan does not identify a boundary as confirmed by Policy 22 of LPP2, which identifies land beyond the Green Belt and the physical edge of settlements as countryside where, for specific reasons, new development is restricted. Policy 11 reinforces the principle that development in the countryside is restricted to certain types, specifically those that require a countryside location. It also sets out criteria for development on unallocated sites within the built up area of settlements generally.
6. The circumstances of the case before me, and specifically whether the principle thereof would be acceptable in the context of the development plan, seem to turn on whether or not the appeal site is and therefore the proposed dwelling would be within the settlement. This is obviously a matter of judgement given the settlement boundary situation.
7. In terms of relevant policies, it seems to me that the key phrase is 'within the built up area'. The appeal site is an undeveloped land parcel. It is located adjacent to the last dwelling and its associated curtilage as it presents to Hall Lane. Hall Lane is a narrow single width road running northeast from the village. There is defined open space to the north west of the appeal site and open expansive countryside to the southeast. With this in mind, the appeal site reads more as part of the countryside in character terms than the village and a dwelling thereon would appear akin to a bolt on to the edge of the settlement rather than one within it. The appeal site is therefore not within the built up area of the settlement, but outside the edge of it.
8. Taking this and the above into account, I am also of the view that the appeal scheme would not represent infill development in the context of the development plan's definition thereof, explaining that such would be small gaps within (emphasis added) the existing built fabric of the village.
9. I have considered the appeal site and the proposed dwelling would not be within the settlement, as such I have not considered the criteria of Policy 11 any further since they would not apply to the appeal scheme. I have also not considered the matter of local need further, since Policy 3 refers to such as being acceptable in other settlements and not outside of them which, given my findings, is where I consider the appeal site to be. Instead I turn to consider the scheme under Policy 22 of LPP2 and whether it would be an acceptable form of development in the countryside.
10. The appeal scheme does not relate to agriculture or forestry and is not the re use or replacement of a building/dwelling. The appeal site is not an exception site nor is the scheme seeking to secure affordable housing. The proposed development does not concern the expansion of a business or employment development, community infrastructure or development concerned with countryside pursuits, recreation or tourism. There is no proposal for renewable energy. All told, and as a proposal for the erection of a wholly new open market dwelling, the appeal scheme would not sit squarely with the exceptions of Policy 22 which seeks, amongst other things, to protect the countryside for its own sake and intrinsic beauty. With this and the above in mind, the principle of the proposed development would not be acceptable in the context of the requirements of the development plan. Specifically, Policy 3 of LPP1 and Policies 11 and 22 of LPP2, the aims of which I have set out.

11. As I have explained, the proposed dwelling in this case would be in the countryside, outside of a settlement within which development would be restricted to local needs owing to its own capacity to absorb meaningful growth, itself due to limited supporting services. There are some services in the village but not such that I would consider sufficient in range for future occupiers of the proposed dwelling to be able to rely on day to day. Residents of what would be an otherwise open market dwelling would therefore have to travel to access services in larger settlements. The evidence does not present a compelling case to sway me from the conclusion that such travel would likely rely on the use of the private car. This is the least sustainable travel option.
12. It seems sufficiently clear therefore that the development of the appeal site and all that it entails would serve to encourage the establishment of unsustainable patterns thereof, contrary to the aims of the Council's spatial strategy set out by Policy 3 of LPP1.

Character and Appearance

13. The appeal site is an undeveloped roughly rectangular flat parcel of land currently laid to grass. It is enclosed on four sides by hedging and a close boarded timber fence. It is otherwise devoid of development and sits on the outer edge of the settlement, bearing strong similarities with the open fields to the north, east and south. Hall Lane is a narrow single width road with development lining mainly its northern edge. Its scale and the pattern and density of development along it invokes a rural character and a 'petering out' of built development into the open countryside.
14. As a scheme seeking outline planning permission with all matters reserved, I agree with the appellant that the proposed dwelling could be so designed to sit well with the existing architecture of the area. However, it seems to me that to place a dwelling and an associated curtilage on the appeal site would be encroachment into the countryside, noticeably beyond the established outer limits of the settlement where, as I have said, built form is low density and blending into open space. The scheme would therefore urbanise land and surroundings of a distinctly rural quality.
15. The proposed development would therefore be harmful to the character and appearance of the area. Contrary to Policies 1 and 10 of LPP1. Amongst other things, these policies seek to ensure that new development will be considered acceptable subject to consideration of its impact on the character of the area and that new development should make a positive contribution to the public realm.

Other Matters

16. As I have alluded to above, close boarded timber fencing borders the appeal site, running the length of the northeast and northwest boundaries. The appellant is of the view that this forms an identifiable hard edge to the settlement and thus the appeal site is within its built up area. I have taken a view on this in my earlier findings and the existence of the timber fence does not change that view. I agree the fence appears stark and obvious and encloses the appeal site but the site itself remains identifiable as open space which would still be outside the edge of the existing built up area of the settlement and not within it. I.e. it is beyond the last building which in itself is on the edges of the built up area. Furthermore, if I were to consider the

appeal site as being within the built up area by virtue of said fence it would be a measure that could be repeated far too often to justify development sites beyond identified settlement limits. Measures that could have potential therefore to cause cumulative planning harm.

17. The appellant has also drawn my attention to an agricultural building to the northwest of the appeal site. In so doing, it is suggested that its use could change through the exercise of rights under permitted development. Specifically, a deemed planning permission under Schedule 2, Part 3, Class Q of the GPDO³. The appellant contends that the change of use of the building could result in a number of new dwellings and associated curtilages. Such would establish a residential use beyond the appeal site and thereby 'extend' the built up area of the settlement accordingly. This, in the appellant's view, would render the appeal site within the built up area of the settlement and potentially make development on it acceptable in the context of the development plan policies I have cited.
18. In coming to a view on this, I am mindful of the court of appeal judgement in Mansell⁴. Amongst other things and in regard to a fallback position in planning terms, the findings of the judgement set out that for a prospect to be 'real' it does not have to be probably or likely, a possibility would suffice. It is in this context that the appellant advances the argument that what could theoretically be done under Class Q should be considered material to the case before me and the implications thereof. Specifically, that a deemed permission does not necessarily have to be granted or indeed sought.
19. As well as what has been advanced, the judgment also set out that *'there is no rule of law that, in every case, the "real prospect" will depend, for example, on the site having been allocated for the alternative development in the development plan or planning permission having been granted for that development, or on there being a firm design for the alternative scheme, or on the landowner or developer having said precisely how he would make use of any permitted development rights available to him under the GPDO. In some cases that degree of clarity and commitment may be necessary; in others, not. This will always be a matter for the decision-maker's planning judgment in the particular circumstances of the case in hand.'* (emphasis added).
20. Given the findings of the judgment it would be pertinent to ascribe some weight to the effect of the change of use of the building concerned. Albeit in the context of what I have quoted above, in the absence of any submission either made or accepted, I am not sufficiently certain that the building concerned would comply with the requirements of Class Q for a deemed planning permission to be forthcoming. Putting that aside, and in the event that it did, the building's use would change to a dwelling(s). Such a scheme would also likely include a curtilage(s). These two things together would have an effect on the character of the area in the vicinity of the appeal site.
21. As per the requirements of the GPDO, the curtilage established to a building acceptable under its provisions would not be able to be greater in size than the land area of the building itself. As such, I remain to be convinced that the area of land such a curtilage(s) could reasonably take up would subsume sufficient area to be able to envelop the appeal site to such an extent that it would be

³ The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)

⁴ Mansell v Tonbridge and Malling Borough Council [2017] EWCA

- readable as within the built up area of the settlement. For me, the appeal site and the open land around it and the agricultural building would remain largely rural in character and the two buildings and associated curtilages would still therefore appear something of a bolt on to the settlement rather than an integral part of it.
22. It is also the case that any approval under Class Q would be so, should all matters be acceptable, regardless of the locational sustainability credentials of the site within which it would be. It is beyond the control of the relevant legislation to consider such. The same cannot be said of an application for express planning permission which is determined in accordance with regard the development plan and all that it entails.
23. With the above factors in mind, any weight that I would attach to the change of use of the building concerned as a perceived fallback position would be limited. To the point that it would not be capable of making the appeal scheme acceptable. Particularly in light of the multiple planning harms and conflicts with the development plan that I have found.
24. The appellant explains that the appeal proposal would be for a 'low cost' home on the appeal site. Family members reside at Newbold and residence at the site would not only allow for the appellant to move out of Newbold but to remain in the community they feel part of and also provide care in the longer term for the residents of Newbold.
25. I am mindful that these factors could be arguable as a local need for a dwelling albeit such a need does focus more on the personal and whilst advanced as a 'low cost' home, there is little additional detail on what this would entail. Further, there is limited evidence to suggest that such a need to reside in the community or care for family members cannot be met by a dwelling elsewhere in the local area and the appellant's connections to the community and the importance thereof are not elaborated on. Any weight I would attach to this consideration would also therefore be limited and I would defer to my earlier comments on the implications of such in the context of my findings on the two main issues.
26. It seems to be common ground that the appeal scheme would be able to provide acceptable parking and access, as well as suitable living conditions for existing neighbours and future occupiers. In so doing it would comply with some parts of the development plan. Being a lack of harm however, these matters would not be sufficient to weigh against the harm I have found. Accordingly, they would be neutral in any balance.
27. I note in the evidence that the appeal site is a short distance from a Scheduled Ancient Monument (SAM). The SAM in this case are remains of earthworks from a medieval village. The Council's conservation advice explains that, owing to the proximity, there is potential for there to be archaeological remains at the site. The most appropriate course of action should development on the site be acceptable would thus be to agree a suitable scheme of ground works and investigation. I have no reason to disagree with these findings which appear to be common ground.
28. As for the location of the SAM and how its land area naturally abuts the edge of the present day settlement I would agree that, to some extent, the SAM would prevent extension of the village in its direction. However, the location and

extent of the SAM is not the only criteria I would use to define where the built up parts of the village are and to where it extends. I have explained these in my findings above and thus the location and extent of the SAM would not cause me to stray from them.

Conclusion

29. Whilst I have had regard to other matters that have been raised, it is for the reasons I have set out above that the appeal is dismissed.

John Morrison

INSPECTOR