



Appeal Decision

Site visit made on 30 June 2020 by G Sibley MPLAN MRTPI

Decision by Chris Preston BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 September 2020

Appeal Ref: APP/Y2430/W/20/3247224

New development, Lewins Close

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73A of the Town and Country Planning Act 1990 for the development of land carried out without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Clive Giles of Giles Developments Ltd against the decision of Melton Borough Council.
 - The application Ref: 19/01017/VAC, dated 3 September 2019, was refused by notice dated 12 December 2019.
 - The application sought planning permission for proposed 8 No. dwellings. Land to South of 1 Tilton Road, Twyford without complying with a condition attached to planning permission Ref: 15/00935/FUL dated 24 February 2017.
 - The condition in dispute is No.17 which states that: The development hereby permitted shall be in accordance with the following approved plans drawing numbers A002 Revision F; P002 Revision D; A003 Revision F, A004 Revision D and A005 Revision C received by the local planning authority on 7th February 2017.
 - The reason given for the condition is: for the avoidance of doubt.
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Decision

1. The appeal is allowed, and planning permission is granted for proposed 8 No. dwellings. Land South of 1 Tilton Road, Twyford, Leicestershire in accordance with the application Ref: 19/01017/VAC dated 3 September, without compliance with condition number 17 previously imposed on planning permission Ref: 15/00935/FUL granted on 24 February 2017 by the Council, but otherwise subject to the conditions contained in Schedule 1 of this decision.

Appeal Procedure

2. The site visit was undertaken by an Appeal Planning Officer whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

Application for costs

3. An application for costs was made by Mr Clive Giles of Giles Developments Ltd against Melton Borough Council. This application is the subject of a separate Decision.

Procedural Matters

4. Planning application Ref: 15/00935/FUL has been implemented and Plots A and B were not built out in accordance with the approved plans and consequently the application was made retrospectively.

Main Issues

- Whether the policies of the Melton Borough Local Plan 2011 – 2036 (2018) (the LP) are relevant in the determination of the appeal and, if so, whether the location of the site would conform to those policies with specific regard to the mix of housing proposed and whether there is a proven local need for the development; and
- If the development fails to comply with the policies of the development plan in those respects, or causes harm in other respects, whether the fallback position afforded by the existing planning permission for 8 dwellings represents a material planning consideration to justify a grant of planning permission.

Reasons for the Recommendation

5. Planning permission was granted in 2017 for 8 dwellings on the site and these dwellings have since been built out (application ref: 15/00935/FUL). The appeal looks to replace condition 17 of the permission to allow a variation in the design of the dwellings at plots A and B. In the approved scheme those dwellings were substantial four bedroomed properties, with the accommodation set over two floors. The two dwellings, as constructed, also have four bedrooms but with three bedrooms at first floor and a further bedroom and en-suite bathroom in the upper floor. The proposal to vary condition 17 essentially seeks approval for that change. All of the other house types would be unaltered.

Whether the development is appropriate to its location and provides an appropriate mix of housing having regard to the policies of the LP

6. Following the determination of the original application and the submission of this application and appeal the Council has adopted the Melton Borough Local Plan 2011 – 2036 (LP) (adopted 2018). Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that planning decisions must be made in accordance with the development plan unless material considerations indicate otherwise. The appeal is made under Section 73A of the Act and consequently, if the appeal were allowed, a new planning permission would be issued for 8 dwellings, which the appellant is entitled to implement or ignore. As such, the up to date development plan policies, where they are relevant to the disputed condition, must be considered and the LP remains the starting point for the consideration of the development.
7. Policy SS2 sets out the housing development strategy for the Borough. Twyford is identified as a 'Rural Settlement' as one of the smaller villages which does not contain shops and services of its own. No allocated housing sites have been identified for Rural Settlements but policy SS2 allows for the development of unallocated windfall sites, subject to meeting the criteria set out in Policy SS3.
8. Policy SS3 identifies seven criteria that development should achieve, relating to a range of matters. The first subsection of the policy states that the development should meet a proven local need, as identified in substantive evidence, for example within a Neighbourhood Plan, community led strategy, a housing assessment or other evidence provided by the applicant.
9. Policy SS3 does not define what constitutes a 'proven local need' and thus it is a matter of judgement when the evidence is considered. The appellant has not identified whether there is a proven local need for the development and has not

provided any evidence in that respect. Consequently, there is no evidence to enable an assessment of whether the 8 new dwellings within Twyford would meet an established local need. In the absence of such evidence, the proposal fails to comply with the first bullet of policy SS3 and does not meet the requirements of the LP in that respect.

10. Policy C2 of the LP states that the Council will seek to manage the type, tenure and size of new housing in relation to the housing needs of the area. The 'optimum' housing mix is set out at Table 8 of the LP. The 'all dwelling' requirement is for 15% to be 1 bed, 30-35% 2 bed, 35-40% to be 3 bed and 15% to be 4+ bed. The housing mix does not specify the floor area of the dwellings, just the number of bedrooms they should provide. Policy C2 notes that there are a number of site-specific circumstances that can influence the housing mix for each development.
11. The housing mix for the approved scheme included four 2 bedroom dwellings, two 3 bedroom dwellings and two 4 bedroom dwellings. The development has not been carried out in accordance with the approved plans nevertheless, the housing mix has not changed. The Officer's Report for the approved planning permission noted that there was an identified need for 39.6% of properties to have 2 bedrooms within the Somerby Ward and concluded that the development would support the local housing needs.
12. Whilst the development does not include any 1 bedroom properties, it would provide additional 2 bedroom dwellings above the requirement set out in Table 8. The Council notes in their Officer's Report for application ref: 19/01017/VAC that there is a Borough wide need for 2 and 3 bedroom properties identified within the Melton Borough Council Housing Needs Study (HNS) (published 2016). The Committee Report for application Ref: 15/00935/FUL referred to the same HNS as justification for the same housing mix for that planning application. Accordingly, whilst the development does not provide any 1 bedroom properties, the development does provide additional 2 bedroom properties which helps meet the identified Borough wide need. The development did provide an additional 4 bedroom property above the housing mix set out in in Table 8. Nevertheless the development is of a relatively small scale of 8 dwellings and the practicality of providing each element of the required mix is no doubt difficult on small sites. When viewed in the round, the development meets the required mix based on borough wide needs and is in accordance with Policy C2 of the LP.
13. The provision of bedrooms within the roofspace, as opposed to on the first floor, does not alter the compliance of the scheme with the aims of policy C2. Moreover, the smaller units within the scheme were identified as those aimed at local affordability and those elements of the scheme remain unchanged. The four-bedroom units were not identified as being 'affordable' properties and the Council has produced no convincing evidence that the alteration in the layout will impact on the way the scheme meets identified local needs. Reference has been made to the potential to sub-divide properties in future but there is nothing to indicate that is intended or that it is more or less likely than any other dwelling in the local housing stock. The properties are already constructed as 4 bed houses and I have assessed the proposal on the layout, as proposed and built. For the reasons stated I am satisfied that the scheme as a whole meets the aims of policy C2.

The Fall-Back Position

14. Regardless of the altered policy position in the form of policy SS3, the approved scheme has been implemented and the development of 8 dwellings is virtually complete. Thus, whether there is a defined local need for the development or not, a scheme of 8 houses will remain. Moreover, the mix of that scheme in terms of the numbers of bedrooms within each unit will remain unaltered. There is a very clear fall-back which would include the two four-bedroom dwellings on plots A and B. If this appeal was dismissed it is highly unlikely that the appellant would decide to construct two or three-bedroom properties in place of plots A and B. Far more probable is that the two dwellings would be completed as per the originally approved plans with four bedrooms.
15. Consequently, in assessing the proposal purely against the requirements of policy SS3 the Council has conducted a theoretical exercise and seemingly failed to consider the very obvious fact that the principle of the development, including the construction of two four-bedroom dwellings has been accepted. In assessing the proposal, the Council appear to have compared the two proposed four-bedroom dwellings against a general need for two and three-bedroom dwellings in the District, as outlined in policy C2. That assessment failed to assess the proposed mix of the scheme as a whole, as is required given that a new planning permission would relate to all 8 dwellings.
16. Therefore, whilst the aims of policy SS3 are noted, the fact that development of a very similar form will take place regardless of any decision in relation to the current appeal is a very strong material consideration in favour of the scheme. The differences between the approved scheme and that now proposed will not cause harm to any stated aim of the development plan in respect of housing mix which will remain unaltered. I have been referred to no policy which seeks to limit the size of units in terms of floorspace and, in any event, the reconfiguration would represent a modest increase in floorspace that would not substantially alter the scale of the dwellings proposed. Accordingly, the proposed scheme would not have a notably greater impact on development plan strategy than the previously approved scheme.

Other Matters

17. The Council has raised no concerns regarding the changes to the external appearance of the two dwellings. The principal difference between the previously approved scheme and the scheme as implemented is the installation of three skylights in the roofslope of each property, to facilitate the use of the loft. Having viewed the site, the changes are extremely minor in that respect and I am satisfied that the alterations do not cause harm to the overall character of the development.
18. An occupier of a neighbouring dwelling identified a concern with regard to outlook and overlooking caused by the development. Plot B, which is closest to the dwelling in question has a blank side wall with no windows that could overlook the occupiers of that dwelling. The side elevation of Plot B has not changed between the approved plans and the as built plans. Consequently, the rear facing sky lights do not result in a loss of privacy for the occupiers of that dwelling. I recognise the neighbouring resident's concerns about variations to the scheme but the changes between what is now proposed and what has previously been considered acceptable by the Council are minimal. Moreover, having viewed the relationship between the properties on site I am satisfied

that the separation distances and relationship between neighbouring windows is such that acceptable levels of privacy will be maintained.

Conclusions on Main Issues

19. Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that planning decisions must be made in accordance with the development plan unless material considerations indicate otherwise. The current LP has been adopted since the previous approval for 8 dwellings and it is necessary to consider the proposal against the development plan that is in force at the time of the decision. For the reasons given above, the proposal is contrary to Policy SS3 of the LP.
20. However, the 8 dwellings have already been built and the appellant has a realistic fall-back position whereby they could complete the development in accordance with the original planning permission. In other words, regardless of the decision in relation to this appeal 8 houses will remain and the mix of those houses will remain unaltered in terms of the numbers of bedrooms in each property. The housing mix is compliant with policy C3 and the use of the roofspace for bedroom accommodation has not altered that position. Consequently, whilst the development may not comply with policy SS3 in terms of the failure to demonstrate a defined local need, there would be no harm to the aims of the development plan arising from the revised layout of the two plots. There would be no benefit in withholding planning permission when the comparison of the impact of the fall-back scenario is considered and no additional harm would arise.
21. The sky lights do not harm the character and appearance of the host dwelling or the street scene, nor do they overlook neighbouring properties and thus there is no harm caused by their installation compared to the originally permitted dwellings. Therefore, the other material considerations that I have identified above outweigh this conflict with the development plan policy and would indicate that planning permission should be granted.

Conditions

22. The Planning Practice Guidance (PPG) makes it clear that decision notices for the grant of planning permission under section 73 should also repeat the relevant conditions from the original planning permission, unless they have already been discharged.
23. The Council has suggested a condition which refers to two separate discharge of conditions applications (Ref: 17/01145/DIS) and (Ref: 18/01321/DIS). These two applications discharged conditions; No.2 (materials), No.3 (ownership), No.4 (Landscaping), No.6 (levels), No.7 (drainage) and No.8 (construction traffic) from planning application Ref: 15/00935/FUL and I am satisfied that those conditions have been discharged. This condition is necessary for the avoidance of doubt and in the interest of proper planning.
24. A number of conditions have been suggested that relate to landscaping, surface water drainage, the turning area and the parking and turning area for each dwelling. These conditions are necessary because they ensure that these elements of the development are permanently maintained, or in the case of the landscaping, maintained over a 5-year period. The turning area appears to have been laid out but has not yet been fully completed with a top surface. It

is not possible to require that work to be completed prior to occupation or use of any of the properties because the scheme is retrospective and some dwellings are already occupied. Consequently, I have attached the condition with a timescale for the work to be carried out. I am satisfied that six months is reasonable given that much of the work has already been completed.

25. A condition has been suggested that Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any subsequent re-enactment with or without modification) would remove the permitted development rights of the dwellings to be extended or to construct buildings within the curtilage of those dwellings. This condition was attached to the original permission and it is still a necessary condition in the interest of the visual appearance of the area.
26. Condition 9 of application ref: 15/00935/FUL required the visibility splays shown on drawing No. A003 Rev F to be cleared of all obstruction and to then be maintained permanently. From the information before me this condition has not been discharged but it remains necessary to ensure that adequate visibility splays are provided and permanently maintained in the interest of highways safety. Given that the application was submitted retrospectively it is not possible to include a condition to carry out the work prior to commencement of work and I have included a timescale for the work to be completed. Three months is a reasonable period given the relatively pressing need to secure satisfactory access arrangements given that some of the dwellings appear to be occupied.
27. A condition has been suggested that would substitute the approved plans for Plots A and B with those submitted with this appeal. I have reworded this condition to include the plans that the development has been carried out in accordance with and have substituted the approved plans for Plots A and B with the following plans: P001 Revision H and P002 Revision I. This condition is necessary for the avoidance of doubt.

Conclusion and Recommendation

28. The development would not be in a suitable location for residential development in accordance with Policy SS3 of the LP, although it would accord with Policy C2 of the LP in terms of the housing mix. Nevertheless, whilst there is a conflict with the development plan as a whole, the other material considerations that I have identified above outweigh this conflict with development plan policy. Therefore, for the reasons given above and having had regard to all other matters raised, I recommend that the appeal should be allowed. I will grant a new planning permission and will insert a new condition to replace condition No.17.

G Sibley

APPEAL PLANNING OFFICER

Inspector's Decision

29. I have considered all the submitted evidence and the Appeal Planning Officer's report, and, on that basis, I agree that the appeal should be allowed.

Chris Preston

INSPECTOR

SCHEDULE 1

1. The development shall be carried out in accordance with the details agreed in the approval of details reserved by condition; 17/01145/DIS and 18/01321/DIS.
2. The approved landscaping scheme shall be carried out within one year of completion of the development and any trees, hedges, shrubs or plants which within a period of 5 years from the completion of the planting die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species, unless the District Planning Authority gives written consent to any variation.
3. All surface water drainage within the site shall be designed and provided such that surface water does not drain into the Public Highway including private access drives, and thereafter shall be so maintained.
4. Within six months of the date of this permission, the proposed turning facility shown on the submitted plan, shall have been provided, hard surfaced and made available for use within the site in order to allow vehicles to enter and leave in a forward direction. The turning area so provided shall not be obstructed and shall thereafter be permanently so maintained.
5. The car parking and any turning facilities shown within the curtilage of each dwelling shall be provided, hard surfaced and made available for use before the dwelling is occupied and shall thereafter be permanently so maintained.
6. Notwithstanding the details shown, no fence or other such obstruction shall be placed within the limits of the existing visibility splay, provided as part of the access works to serve Nos. 1 - 7 Tilton Road.
7. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any subsequent re-enactment with or without modification) the dwellings hereby permitted shall not be extended nor buildings positioned within the curtilage of the dwellings without the prior permission of the Local Planning Authority granted on applications submitted in those regards.
8. Within three months of the date of this permission, the proposed visibility splays shown in each direction out of the site on the amended plan (drawing No. A003 Rev. F), of 2.4 metres by 65 metres to the south and 45 metres to the north shall have been provided and cleared of all obstruction exceeding a height of 600mm above the level of the adjacent carriageway. Once provided these splays shall thereafter be permanently so maintained.
9. The development hereby approved shall be carried out in accordance with the following plans: A001 Existing Site Plan; A002 Ref F Site Plan; P001 Rev H Floor Plans and Elevations – Plot A; P002 Rev I Floor Plans and Elevations – Plot B; P003 Rev E Plans and Elevations – Plot G & H; and P004 Rev F Plans and Elevations – Plot C, D, E and F.