
Appeal Decision

Site visit made on 26 October 2020

by David Carter BSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st December 2020

Appeal Ref: APP/K2420/W/20/3250144
14 Station Road, Ratby LE6 0JN

- 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 Harjeeve Bath against the decision of Hinckley & Bosworth Borough Council.
 - The application Ref 20/00004/FUL, dated 24 September 2019, was refused by notice dated 17 March 2020.
 - The development proposed is demolition of an existing garage and installation of 2 new residential dwellings in the rear garden of 14 Station Road, Ratby.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant's name is taken from the appeal form as the planning application form is unclear.
3. The appeal proposal is a resubmission following an earlier rejected scheme (19/01083/FUL). The earlier proposal proposed new housebuilding outside the defined settlement boundary.
4. The appellant has indicated that, in response to comments, amended plans were submitted on 25 February 2020. The Council's decision was made using the revised plans and I have determined the appeal on this basis.
5. The position on the supply of housing land within the Borough changed when the Residential and Employment Land Availability Monitoring Statement 2019-2020 was published. The appellant was invited to comment on the latest position. This matter is considered further below.

Main Issues

6. The main issues in respect of this appeal are:
 - (i) the effects of the proposed development on the character and appearance of the area having regard to whether or not the appeal proposal lies within a suitable location for the proposed development and,
 - (ii) the likely effects on the living conditions of the occupiers of adjacent properties in respect of daylighting and outlook and,
 - (iii) the likely effects of the proposed development on a protected ash tree.

Reasons

Character and appearance

7. The appeal proposal would involve the demolition of the existing garage to No 14 Station Road (No 14) to enable extension of the driveway and the development of 2 detached dwellings with 4 and 5 bedrooms respectively, within the extensive rear garden space to No 14. Most of the rear garden area lies outside the designated settlement boundary with that part of the site also falling within Flood Zones 2/3. The site is further constrained by the existence of a protected ash tree on the boundary and a changing accommodation for the adjacent sports ground.
8. Notwithstanding the constraints, the appellant has stressed that the appeal site would represent a sustainable development due to its accessible location with a wide range of services and facilities within close proximity. The development plan for the area comprises the Hinckley and Bosworth District Core Strategy (2009) (CS) and the Site Allocations and Development Management Policies DPD (2016) (SADMP). Ratby is identified as a Key Rural Centre in the settlement hierarchy in the CS which, in turn is reflected in the SADMP. As such, it occupies a position in the top tier within the District's rural areas.
9. However, the effect of the site constraints is that the 2 proposed dwellings would be constructed on that part of the site within the designated settlement boundary leaving the remaining open area as rear garden space. The 2 dwellings would be large and, because of the restricted area within the settlement boundary, they would not have front gardens and would appear cramped. The areas to the front of the dwellings would be wholly taken up by the access and parking.
10. Views of the appeal site from Station Road are currently blocked by the existing garage and mature vegetation on the site boundary. Removal of the garage and widening the driveway will open up views from Station Road and create significant hard-surfaced areas for access and parking, significantly altering the spacious character and appearance of the area. The new dwellings would also significantly impact on character and appearance for the occupiers of recently constructed dwellings on Old Bakery Close and Nos 14-20 Station Road all of whom currently enjoy an open outlook to the rear of their properties.
11. Accordingly, I find that appeal proposal would lead to a backland development that would appear cramped and represent over-development of the relatively small area falling within the settlement boundary. The new dwellings would not relate comfortably to the existing pattern of development and would, thereby, harm the character and appearance of the area. As such, the appeal scheme conflicts with Policies DM1 and DM10 of the Site Allocations and Development Management Policies DPD (2016) (SADMP) Policy DM1 states that planning proposals that accord with the policies in the Local Plan will be approved without delay, unless material considerations indicate otherwise. Policy DM10 highlights the importance of high-quality design and the need to respect the local context and character. The approach to design is set out in further detail in the Council's recently adopted Good Design Guide SPD (2020). The policies and approach remain consistent with the Government's approach as set out in the National Planning Policy Framework (the Framework).

Living conditions

12. Although the appeal site covers a substantial area, the 2 proposed dwellings are nestled into a relatively small part of the site. The main consideration that arises is the proximity of the proposed dwelling on Plot 2 to the recently built dwellings on Old Bakery Close and, in particular No8. No 8 has a relatively small rear garden estimated by the Council at 7m in length. This places the main 2 storey side wall of plot 2 just 12m from the rear elevation at No 8. This compares with a minimum requirement of 14m in the recently adopted Good Design Guide Supplementary Planning Document (SPD).
13. In mitigation, the appellant points out that the ground floor level at plot 2 would be c0.5m lower than that of the properties on Old Bakery Close and that the design incorporates a single storey garage closest to the boundary with No 8. While I recognise these points the proximity of the proposed dwelling at plot 2 means that the occupiers of nearby properties in Old Bakery Close, especially at No 8, would be significantly and adversely affected by the proximity and over-bearing dominance of the proposed dwelling. The outlook from No 8 and other nearby properties would be substantially obscured and there is likely to be some loss of daylighting, particularly to the rear gardens.
14. The appellant has also pointed out that the appeal proposals comply with the separation distances between dwellings set out in the emerging version of the Good Design Guide SPD. This set the minimum gap between No 8 and plot 2 at 12m not 14m. In view of the importance of this matter, I took the opportunity to carefully observe the proximity of the proposed new dwelling to No 8 on my site visit. On the basis of that visit, I came to the view that the new building would be unreasonably close to No 8.
15. In response to comments made during the consultation the appellant suggests that noise to the area to the rear of properties on Old Bakery Close would remain as it already exists. I would not accept this, however, since the area to the front of the new dwellings would be laid out for access and parking bringing an element of noise disturbance that simply does not currently exist.
16. The design and orientation of the 2 new dwellings would avoid direct overlooking into adjacent properties on Old Bakery Close although oblique views would be possible. The outlook from rooms at first floor elevation in properties on Old Bakery Close would unavoidably look directly into the rear gardens of the 2 new dwellings. The appellants suggestion that the views would be in both directions is correct but, the difference is that the occupiers of dwellings on Old Bakery Close do not currently experience this so, their concerns are understandable.
17. On this issue, I conclude that the appeal scheme would have a significant harmful effect on the living conditions of the occupiers of the adjacent housing particularly the occupiers of No 8 Old Bakery Close. This would arise from the proximity and over-bearance of the proposed dwelling at Plot 2. Therefore, the appeal proposal conflicts with Policy DM10 of the SADMP, and advice in the Good Design Guide (2020). Policy DM10 highlights the importance that new development should protect the privacy and amenity of neighbours. The approach to design, including backland developments, is set out in further detail in the Council's recently adopted Good Design Guide SPD (2020).

Protected tree

18. The arboricultural report prepared on behalf of the appellant by Tree Life Arboricultural Consultants initially proposed removal of the mature protected ash tree. However, following discussions with the Council the plans were changed to remove a single storey garage to the side of the proposed dwelling at plot 1, coupled with less intrusive foundations to allow retention of the ash tree. This is confirmed in the appellant's final comments.
19. The reasons for placing the Tree Preservation Order still stand. The ash tree has a substantial trunk in excess of 1m diameter, it is clearly visible from public areas, nearby dwellings and the adjacent playing fields. There are no existing trees of similar proportions nearby and, thereby, it has a high amenity value contributing significantly to the character and appearance of the area.
20. The new dwelling at plot 1 is approximately 3 m from the trunk of the tree and there is a risk that the construction of a new building in such close proximity to the tree could put it at risk. There would also be the potential for conflict between the crown of the tree and with a building in such close proximity. There is no sign of ash dieback at present so, although this disease remains a threat, it would not be a sound reason for removal of the tree.
21. Accordingly, I find that the proposed siting of the new dwelling at plot 1 unnecessarily puts at risk the health and longevity of the protected mature ash tree on the boundary of the appeal site. Thereby, the appeal proposal conflicts with Policy DM6 of the SADMP which aims, amongst other things, to retain irreplaceable habitats. This policy remains consistent with the Framework.

Other Matters

Flooding

22. The 2 new dwellings proposed would be located within Flood Zone 1. The appellants have included a Flood Risk Assessment prepared by Innervision Design. This report confirms, amongst other things, that safe access and egress would be available and there would be a low risk of flooding. The Council's Drainage Officer has no objections to the proposal. I have no reason to disagree in respect of this technical matter. However, this technical consideration would not out-weigh the objection in principle to development of this land I have identified above.

Highway safety

23. The Highways Authority have confirmed that they have no objections to the proposal stating that planning conditions could be imposed to ensure that the access would have good visibility splays either side for pedestrians and vehicles and also that sufficient turning and parking space would be available on the appeal site to serve the development proposed. I have no reason to disagree in respect of this technical matter. However, this technical consideration would not out-weigh the objection in principle to development of this land I have identified above.

Housing land supply

24. At the time the planning application was determined the Council accepted that it was not able to identify a 5 year housing land supply (5YHLS). However, the

Council recently published its latest Residential Land Availability Monitoring Statement for 1 April 2019 - 31 March 2020. This report includes a significant increase in supply compared to the previous version and, using the Government's standard method, a 5.15 years supply can be identified.

25. In response, the appellant recognises this latest assessment but noted it was submitted late into the appeal process. However, most of the appellant's response focuses on a recent planning approval by the Council for a scheme of 90 dwellings outside the settlement boundary at Ratby (20/00462/FUL). I am not familiar with the detail of that scheme but, it would appear that the critical difference was in the planning balance where, the Council felt that benefits of that proposal outweighed the harm.
26. While the position regarding the 5YHLS might change in future, the position at the point of determination of this appeal is that, using the Government's standard method, a 5 year supply has been demonstrated by the Council and, as a result, paragraph 11d) of the Framework is not engaged in respect of the supply of housing land.

Benefits

27. As I noted above, the appellant argues that the appeal proposal would constitute sustainable development because of its accessible location with a wide range of services and facilities within close proximity. The provision of 2 new dwellings would have short term benefits through construction and subsequently through support for local services.

Planning Balance

28. Notwithstanding the current position on the 5YHLS the Council continue to recognise that the housing policies in the development plan are out of date. The benefits of the appeal proposal for 2 new dwellings would be limited and focused on its accessible location.
29. However, the proposal would conflict with Policies DM1, DM6 and DM10 of the SADMP referenced under the main issues above. I have found that these policies remain consistent with the Framework and therefore carry significant weight.
30. Accordingly, I find that the harmful effects of the appeal proposal would significantly and demonstrably outweigh the benefits. Therefore, the proposed development would not lead to a sustainable development and other material considerations would not justify making a decision except in accordance with the development plan.

Conclusion

31. For the reasons given above and, taking account of all the matters raised, I conclude the appeal should be dismissed.

David Carter

INSPECTOR