



Appeal Decision

Site Visit made on 25 May 2021

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 June 2021

Appeal Ref: APP/K2420/W/20/3261704

Land to the North of Newtown Linford Lane, Groby, Leicestershire LE6 0FF

- 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 Jason McDonagh against the decision of Hinckley and Bosworth Borough Council.
- The application Ref 20/00068/FUL, dated 21 January 2020, was refused by notice dated 21 April 2020.
- The development proposed is replacement of an existing dwelling with a new dwelling.

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are (i) whether the development would provide appropriate living conditions for future occupiers having regard to noise, vibration and dust, (ii) the effect of the development on the supply of minerals, and (iii) whether it would comply with development plan policy and the National Planning Policy Framework (the Framework) in respect of flood risk.

Reasons

The existing use of the site

3. There is a dispute between parties on the existing lawful use of the appeal property. As the consequence of a lawful development certificate issued following an appeal, the appellant contends the site has a lawful use as a dwellinghouse or, if not, that principles of fairness and good governance would preclude enforcement against any residential use. The Council disagrees and highlights that the certificate explicitly does not address the lawfulness of the use of the building. Also, submissions which dispute the appellant's assertions on the matter have been made by Midland Quarry Products (MQP) which own and operate Groby Quarry to the north of the site.
4. It is not my role in dealing with this appeal seeking planning permission to conduct an exercise as to the lawful use of the appeal site. No lawful development certificate has been issued that specifically relates to its use. It is open to the appellant to apply for such a certificate. For clarity purposes, I confirm that any reference in this decision to the appeal property as a dwellinghouse does not imply its residential use is lawful.

Living conditions

5. Groby Quarry has planning permission for extraction of hard rock, as well as for processing plant and ancillary operations such as asphalt and concrete

- production. Submitted plans indicate that the main plant would be located towards the south east corner of the quarry and would be served by a new access road which is yet to be constructed. The appellant has not sought to dispute the claims from MQP that the appeal proposal would be within 100 m of the permitted excavation limit and 50 m of the proposed road.
6. MQP advise that the construction of the new site access near to the southern boundary would support a potential increase in output from the quarry from 100,000 tonnes to 3,000,000 tonnes per annum. Also, the planning permission allows the constant operation of the asphalt plant and associated lorry movements in and out of the site. To construct the road and plant site, infilling of the southern part of the quarry is proposed using overburden excavated from the northern face. These operations would generate significant earthworks close to the southern boundary. I am advised that beyond the development stage, daily blasting would be required to work the minerals.
 7. There is limited information before me on the level of noise, vibration or dust emissions that may be produced from the quarry. However, having regard to their potential scale and proximity to the appeal site, I consider that there is a significant risk that the above activities could have harmful effects on the living conditions of occupiers of the proposed dwelling.
 8. The appellant suggests that there is no realistic prospect that significant extraction will take place as part of the quarry closest to the appeal site contains water. However, the igneous rock excavations from the quarry are described as being of national importance by Leicestershire County Council, the mineral planning authority. Also, in light of the submissions from MQP as the operator, it is reasonable to expect extraction and other noise, vibration and dust generating activities to continue and to potentially increase at the quarry.
 9. The appellant suggests that the proposal would be comparable to the current situation as a dwelling already exists on the site. However, for the aforementioned reasons, it is unclear whether the property can lawfully be used as a dwelling. In any event, no policy has been referred to which would allow unsatisfactory living conditions for occupiers of a replacement house. There is no substantive evidence that demonstrates future occupiers would be unaffected by noise, vibration or dust generating activities from the quarry or which shows the scheme would lead to improvements in these regards.
 10. For the above reasons, and in the absence of firm evidence that demonstrates otherwise, I conclude the proposal would not provide appropriate living conditions for future occupiers having regard to potential noise, vibration and dust effects from Groby Quarry. In these respects, it would not accord with DPD policies DM10 and DM14. Amongst other things, these seek to ensure that occupiers of proposed development, including replacement dwellings, are not adversely affected by nearby activities.

Supply of minerals

11. The quarry site planning permissions are subject to conditions that prescribe noise and vibration limits in relation to the nearest inhabited residences. MQP contend that, if carried out and occupied, the proposal would result in significant risk of such limits being exceeded. Also, there is concern the proposal would lead to tighter controls on noise and blasting limits as part of the periodic review of the quarry's mineral planning permission under

Schedule 14 of the Environment Act 1995. Consequently, extraction operations would need to be curtailed with the subsequent sterilization of large areas of the mineral reserves. There is no technical evidence on noise or blasting effects that contradicts MQP's submissions in these regards.

12. The appellant argues that the proposal would have no greater impact on the restriction of activities at the quarry compared to the existing situation. However, in light of the provisions of section 75 of the Town and Country Planning Act 1990, a grant of planning permission for the proposal would clearly allow the residential use of the site. As such, a decision to allow the proposal may potentially lead to restrictions on mineral extraction at the quarry which otherwise would not apply.
13. For these reasons, I conclude the development would have a detrimental effect on the supply of minerals. In this regard it would be contrary to policies M11 and M12 of the Leicestershire Minerals and Waste Local Plan 2019. These aim, amongst other things, to safeguard mineral resources from sterilisation and to avoid development that affects operations at a mineral site.

Flood risk

14. The site lies in an area identified as being at medium probability of fluvial flooding (flood zone 2) on the Environment Agency's (the EA's) flood map for planning purposes. In line with the Framework, a flood risk assessment (FRA) has been submitted.
15. The Framework refers to a sequential test which aims to steer new development to areas with the lowest risk of flooding. The FRA states this test need not be applied as the proposal is for a replacement building. However, the scheme would not clearly fall within the definition of minor development as set out at paragraph 164 and footnote 51 of the Framework. Therefore, it is not exempt from the sequential test.
16. However, the proposal is for a replacement building on a small site, all of which lies in flood zone 2. DPD policy DM14 requires replacement dwellings in rural areas to be situated within the original curtilage and so the proposal would be contrary to policy if located off the site. When adopting a pragmatic approach on availability of alternatives, it is evident that the proposal could not reasonably be located on land at lower flood risk. As such, it would comply with the flood risk sequential test.
17. Under the terms of the Framework, the proposal should also comply with an exception test which requires it to be safe without creating flood risk elsewhere. In this regard, the Council raise concern that the proposed finished floor levels would be too low in light of the EA's standing advice on the issue, although this advice has not been provided.
18. The FRA explains the ground floor of the proposal would be above estimated flood levels taking into account a climate change event. Also, reference is made to possible water exclusion and water entry strategy measures that could be incorporated as part of the development. No specific details are provided but appropriate measures could be secured by planning condition to ensure the dwelling would be flood resistant. The scheme would have a smaller footprint than the building to be replaced and so it would not exacerbate flood risk elsewhere. As such, it would comply with the exception test.

19. For these reasons, I conclude the proposal would accord with DPD policy DM7 and the Framework in respect of flood risk. These aim, amongst other things, to ensure development does not create or exacerbate flooding.

Other Matters and Planning Balance

20. Groby Pool Site of Special Scientific Interest (SSSI) lies on the opposite side of the road to the appeal property. Its importance lies with its open water, marsh and ground plant species as well as wintering wildfowl. The Council raise no concern that the proposal would harm the ecological value of the SSSI and there is no reason for me to arrive at a different view on the matter.
21. The development would provide a new energy efficient dwelling with internal space more suited to modern living than the existing accommodation. Also, it would incorporate measures to protect against and to avoid flood risk. Its construction would generate employment. The proposal would be smaller and more attractive than the existing building and so it would enhance the site. Overall, I attribute moderate positive weight to these factors.
22. The Council indicate that its development plan housing policies are out of date as it is unable to demonstrate a 5 year housing land supply. In such circumstances, the benefits of the scheme need to be considered against the adverse effects having regard to the policies of the Framework.
23. The inappropriate living conditions for future residents would go against the Framework's aim to create places with a high standard of amenity for occupiers of property. Also, the Framework states great weight should be given to the benefits of mineral extraction and to normally refuse permission for schemes that might constrain mineral working. Consequently, I attach substantial weight to the harm identified in respect of the first 2 main issues. The adverse effects would significantly and demonstrably outweigh the benefits of the scheme. Therefore, the presumption in favour of sustainable development as set out at paragraph 11 of the Framework does not apply.

Conclusion

24. The scheme would be acceptable when assessed against flood risk policies but I have found it would not provide appropriate living conditions for future occupiers and would detrimentally affect the supply of minerals. As such, the proposal would not accord with the development plan policies when read as a whole. The overall benefits and other considerations are of insufficient weight to justify a decision contrary to the development plan. Therefore, I conclude the appeal should be dismissed.

Jonathan Edwards

INSPECTOR