



Appeal Decision

Site Visit made on 18 May 2021

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 June 2021

Appeal Ref: APP/T2405/W/21/3267969

Trois Acres, Forest Road, Lubbethorpe LE19 3LR

- 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 Adrian Sykes - Skye Property Group Limited against the decision of Blaby District Council.
 - The application Ref 20/0758/OUT, dated 11 June 2020, was refused by notice dated 30 November 2020.
 - The development proposed is demolition of existing dilapidated buildings. Following which, a self-build development.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Adrian Sykes of Skye Property Group Limited against Blaby District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. I have removed the words '...of distinction and style at Trois Acres, Leicestershire' from the description of the proposal given these are not a description of development. Furthermore, the quality of design and how the proposal would respond to the character and appearance of the area is a matter for my assessment.
4. The proposal seeks outline planning permission with matters of access, layout and scale sought for approval. Therefore, the plans provided have been material in me assessing these particular matters. I have assessed the details of appearance and landscaping shown on the plans on the basis that these aspects of the proposal are shown for indicative purposes only.

Main Issues

5. The main issues are:
 - whether the appeal site would be a suitable location for the proposed development, having regard to the development plan and national policy including the effect of the proposal on the character and appearance of the area; and
 - the effect of the proposal on protected species.

Reasons

Location including character and appearance

6. Policies CS1 and CS5 of the Blaby District Local Plan (Core Strategy) Development Plan Document (2013) (the Core Strategy DPD) set out the Council's 'Strategy for locating new development' and how housing in the area is to be distributed. Together these policies confirm amongst other things that most new development including housing will take place within and adjoining the 'built up areas' of the Principal Urban Area (PUA) of Leicester. Outside the PUA, development is to be focussed within and adjoining the settlements identified under these policies. This approach to focus and distribute new development in the most sustainable locations in accordance with a settlement hierarchy is consistent with the plan-led approach endorsed by the National Planning Policy Framework (the Framework).
7. The proposed dwellings would sit adjacent to the existing dwelling within the appeal site at Trois Acres. The Redcomb Business Park is situated beyond the rear boundary of the site. There is other built development within relatively close proximity to the site including sporadic housing, the nearest of which is accessed off the B582, and the nearby Next PLC site. However, the landscape surrounding the appeal site is of a prevailing rural character with open land adjoining and facing the site on Forest Road and no immediately adjoining neighbouring dwellings. The site is also visually and physically divorced from the nearest defined settlement boundary at Enderby. Consequently, the site does not sit within any recognisable settlement, village or hamlet and is undoubtedly located within the countryside for the purposes of decision making.
8. Policy CS18 (Countryside) of the Core Strategy DPD confirms that land will be designated as countryside where it is outside the limits of built development. The policy confirms amongst other things that planning permission will not be granted for built development in the countryside which would have a significantly adverse effect on the appearance or character of the landscape. The policy also confirms that the need to retain countryside will be balanced against the need to provide new development (including housing) in the most sustainable locations.
9. Development Management Policy 2 (Development in the Countryside) of the Blaby District Local Plan (Delivery) Development Plan Document (2019) (the Delivery DPD) supports development proposals consistent with Core Strategy Policy CS18 subject to several criteria being met including that development is in keeping with the appearance and character of the existing landscape, development form and buildings.
10. The above development plan policies reflect the requirements in the National Planning Policy Framework (the Framework) for development to achieve sustainable development and for development to be sensitive to its surroundings including recognising the intrinsic character and beauty of the countryside.
11. The existing bungalow at Trois Acres is modest in scale. The buildings proposed for demolition are also low-rise structures. Given their simple form and their location to the rear of the bungalow, these buildings are relatively inconspicuous when viewed from Forest Lane. There are also other buildings

visible from Forest Lane within the wider landscape. Even so, they are generally set a substantial distance away with intervening fields and mature planting. Together these factors combine to give Forest Lane a prevailing rural character and appearance.

12. In contrast, by virtue of their two-storey scale, and terraced block layout, the combined bulk and mass of the dwellings would be likely to significantly increase the presence of a domestic and more urban built form within the landscape which would erode the prevailing rural characteristics of the countryside. Any window fenestration at first floor level would further emphasise the intensive residential nature of the development. The incongruity of the proposal relative to the prevailing rural surroundings would be evident to passers-by as well as in more distance views including from the B582 close to the junction with Forest Road. For these reasons, the development would have a significantly adverse effect on the character of the landscape.
13. I have already found that the site does not sit within any recognisable settlement, village or hamlet. The nearest services and facilities to meet day-to-day needs are in Enderby. The site is accessed off Forest Road where the national speed limit applies and there is no lit footpath linking the site to the nearest bus stop or Enderby. Therefore, the nearest services and facilities to meet the day-to-day needs of occupants are not conveniently located for round trips by bus or on foot. In these respects, the accessibility of the appeal site is not comparable to the appeal example provided¹ by the appellant. It is likely that occupants of the development would be heavily reliant on the use of the private motor vehicle for the majority of day-to-day trips. Consequently, I find that the site is isolated in the terms described in the Framework and would not be sustainably located. This further persuades me that development in this countryside location would be unacceptable.
14. I conclude that the development would not be in a suitable or sustainable location and that it would result in a significantly adverse effect on the character and appearance of the area. The development would fail to accord with the strategic objectives of the development plan and would conflict with the sustainable development and character and appearance requirements of Policies CS1, CS5 and CS18 of the Core Strategy DPD and Policy DM2 of the Delivery DPD and the Framework.

Protected species

15. The Framework seeks amongst other things to avoid significant harm to biodiversity. The Office of the Deputy Prime Minister Circular 06/2005 (Biodiversity and Geological Conservation – Statutory Obligations and their Impact within the Planning System) states that the presence of a protected species is a material consideration when a development proposal is being considered which would be likely to result in harm to the species or its habitat. It goes on to say that it, "... is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision".

¹ Appeal ref APP/P3420/W/19/3225154

16. The appellant's 'Bat Activity Survey Report' dated September 2020 (the report) confirms amongst other things that 'Building 1' (B1) was inspected internally for the pre-emergent flight of brown long-eared bats, with one specimen seen within this building. In addition to this specimen, commuting and foraging common pipistrelle and noctule bats were identified around the site. The report then summarises at Paragraph 3.2.5 that 'B1 is thought to contain a day roost of brown long-eared (*Plecotus auratus*) bats, although this cannot be confirmed by this survey alone'. Paragraph 4.2.2 of the report confirms that species-specific compensation and mitigation measures are required.
17. The recommendations at Paragraph 5.1 of the report include amongst other things that two further activity surveys to ascertain the population size and to categorise the roost type. The report also suggests that a bat loft will need to be worked into the proposals. However, without the further activity surveys, I cannot be certain of the extent to which protected species would be likely to be affected by the proposed development nor whether the suggested mitigation would specifically address this. In the circumstances, a condition requiring post-decision survey work to be undertaken would be inappropriate and would conflict with the above guidance.
18. In addition, as the appeal scheme could result in a breach of the protection afforded to bats by the Habitats Regulations, a European Protected Species mitigation license (EPS Licence) would have to be obtained from Natural England (NE) prior to commencement of the redevelopment works affecting roosting bats.
19. The Conservation of Habitats and Species Regulations 2017 (as amended) (2017 Regulations) impose a duty on me to consider whether EPS would be affected by a proposal and whether mitigation measures would be effective. In carrying out this duty, Circular 06/2005 requires me to have regard to the 'derogation tests' set out in regulation 55 of the 2017 Regulations. These would need to be met for a EPS licence to be issued. However, in the absence of the information required to demonstrate the extent to which protected species would be likely to be affected, I am not in a position to consider whether a EPS licence would be likely to be issued in this instance.
20. I conclude that it has not been demonstrated that the development would not result in harm to protected species. In that regard the proposals would conflict with the nature conservation aims in Policy CS19 (Biodiversity and geo-diversity) of the Core Strategy DPD and DM2 of the Delivery DPD. The proposal would also be contrary to the clear intentions of the Framework and Circular 06/2005 to avoid significant harm to biodiversity.

Other considerations

21. The Framework recognises the need to provide housing for different groups including for people wishing to commission or build their own homes. Development Management Policy DM10 (Self and Custom Build Housing) of the Delivery DPD also supports such development in suitable locations.
22. The Council confirms that it has not knowingly granted planning permissions for self-build housing. There is no substantive evidence before me to demonstrate that there is unmet demand on the self-build register nor any information as to whether there are individuals on the register that are awaiting plots in this countryside location. The appellant suggests the self-build aspect of the

development is intended to service the needs of the landowner's family. However, it is not clear whether or not these individuals are on, or eligible to be included on, the self-build register. Therefore, I cannot be certain that the proposal would address any unmet demand on the self-build register.

23. Given the uncertain position, for the purposes of this appeal I have assumed that there are currently no available self-build or custom-build house plots in the district. The provision of 3 self-build or custom-build dwellings has the potential to make a limited but important contribution towards the housing mix and the need for such plots in the area.
24. The appellant suggests that a right of access would be provided across a field in their ownership and a new footpath would be funded alongside the B582 in order to facilitate access to the nearest bus stop. However, the plan provided at page 17 of the appellant's 'Consultee Responses – Part 1' shows the proposed right of way would run through land which sits outside the red line boundary of the appeal site. Therefore, the provision of this link could not be secured by condition nor have I been provided with a completed legal obligation to secure this. In any case, I am not persuaded by the evidence before me that a right of way across a field would be appealing to all users of the appeal site particularly during hours of darkness or periods of inclement weather. Furthermore, this would not resolve the absence of an uninterrupted, lit footpath link from the site to Enderby.
25. Paragraph 118 of the Framework states amongst other things that decisions should give substantial weight to the value of using brownfield land within settlements for homes and other identified needs. Policy CS1 of the Core Strategy also encourages the use of brownfield land in settlements. However, given that I have found the site is not situated within a recognisable settlement, the positive weight I attach to the use of previously developed land is somewhat diminished.
26. The appellant's submission indicates that the dwellings would incorporate renewable energy systems and electric car charging points. Whilst such measures would be commendable, this assumes that the individual owners the self-build units would commit to these provisions given that they would need to have primary input in the final design of the dwellings. Even if such provisions were made, in the context of a scheme for 3 dwellings, any benefits would be likely to be relatively limited.
27. My attention has been drawn to a development at Lubbesthorpe which the appellant suggests is in the countryside. However, the Council has confirmed that particular site forms part of a Sustainable Urban Extension allocated through the development plan process. Therefore, this example is not comparable to the appeal proposal.

Planning Balance and Conclusion

28. Paragraph 12 of the Framework confirms amongst other things that the development plan is the starting point for decision making and where a planning application conflicts with an up-to-date development plan, permission should not usually be granted.
29. The Council has confirmed it can demonstrate a 7.1-year housing land supply and this has not been disputed. The most important policies for determining

the appeal are those which seek to promote sustainable growth and to protect the countryside and protected species. These policies are consistent with the Framework. I therefore attach full weight to these policies and the 'tilted balance' under Paragraph 11 of the Framework is not engaged.

30. Three dwellings would make a limited but important contribution towards the Council's housing requirements, specifically in terms of self and custom-build housing. However, a site-specific executed planning obligation to secure the dwellings for this specific purpose has not been provided. This would be the appropriate mechanism to ensure the development of the individual dwellings would meet the legal definition in the Self-build and Custom Housebuilding Act 2015 (as amended by the Housing and Planning Act 2016) and that the initial owners of the homes would have primary input in their final design. However, such an undertaking is not before me. This greatly diminishes the positive weight which I afford to the potential provision of self-build housing.
31. In principle new dwellings in this location would conflict with the sustainable development aims of the development plan and the Framework and would have a significantly harmful effect on the character and appearance of the countryside. Furthermore, it has not been demonstrated that the development would not result in harm to protected species. These are matters which attract very significant weight and tip the balance firmly against the proposal.
32. No further material considerations have been advanced of sufficient weight to justify a decision other than in accordance with the up-to-date development plan. Therefore, for the reasons set out, I conclude that this appeal should be dismissed.

M Russell

INSPECTOR