



Appeal Decision

Site Visit made on 1 June 2021

by Samuel Watson BA(Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th July 2021

Appeal Ref: APP/R1038/W/21/3269254

76a New Road, Wingerworth, Chesterfield S42 6UJ

- 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 M Gill against the decision of North East Derbyshire District Council.
 - The application Ref 20/01004/OL, dated 16 October 2020, was refused by notice dated 15 January 2021.
 - The development proposed is described on the application form as 'outline application (with all matters reserved) for the erection of one bespoke family home with access off Birkin Lane'.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of one bespoke family home with access off Birkin Lane at 76a New Road, Wingerworth, Chesterfield S42 6UJ in accordance with the terms of the application, Ref 20/01004/OL, dated 16 October 2020, subject to the conditions set out in the schedule at the end of this decision.

Preliminary Matters

2. The proposal before me has been made in outline with all matters, namely access, layout, appearance, landscaping, and scale, reserved for subsequent application(s). The information before me is illustrative and I have dealt with it as such.
3. The Council are currently developing the North East Derbyshire Local Plan (2014-2034, the 'eLP'). I understand that the examination of the eLP is at an advanced stage, with consultation on main modifications having recently concluded. Whilst I accept that the eLP is not yet adopted, and therefore there is some potential liability for change, given the foregoing I nonetheless accord it significant weight in this decision.

Main Issues

4. The main issues in this case are:
 - Whether the appeal site is in a suitable location for new housing, with particular regard to its relationship with Wingerworth; and,
 - The effect of the proposal on the character and appearance of the area.

Reasons

Suitability of Location

5. The appeal site is a small field associated with No 76a New Road, between that property and Birkin Lane to the south. Being outside of the 'Settlement Development Limits' (SDL) for Wingerworth as shown in the Wingerworth Neighbourhood Plan (made as part of the development plan in July 2018, the 'NP'), the site falls within the countryside for the purposes of the development plan. I note that, insofar as the appeal is concerned, the SDL here is consistent with the North East Derbyshire Local Plan 2001 to 2011 (adopted 2005, the 'Local Plan'), and the intended provisions of the eLP.
6. Local Plan policies GS1 and GS6 direct development, out of preference, to within SDLs. In a similar manner to paragraph 79 of the National Planning Policy Framework (the Framework) policy GS6 sets out certain exceptions to that overarching approach, albeit that the appellant has not advanced the scheme on the basis that it would be justified by virtue of its countryside location or function. As such the proposal would not benefit from support via policy GS6, nor be consistent with the overarching aims of policy GS1 (including protecting the natural environment and its character). In that context I note that there is no dedicated footway or lighting along Birkin Lane to New Road (a principal route through the village).
7. However, the site abuts the SDL around Wingerworth. It is comparatively well related to the village, with various dwellings around it (noting that the Council recently granted planning permission for a dwelling obliquely opposite along Birkin Lane, slightly further away from New Road).¹ I saw how the distance between the appeal site and New Road is very short, and there is a verge which I observed to be clearly used by pedestrians. Here Birkin Lane is relatively straight, and by the appeal site there is visibility towards New Road and associated 30 miles per hour signs. As such future occupants would have reasonably convenient pedestrian access to Wingerworth, rather than being wholly or predominantly reliant on the use of private vehicles.
8. Moreover, Wingerworth is described by the council as being a 'Level 2' settlement, I note from the submitted evidence that these settlements are suitable for growth and are secondary only to the district's four towns for their sustainability. I understand from the information before me that there are various services and facilities within the village, including shops. During my site visit I also noted a public house and bus stops very close to the appeal site. In my view NP policy W2 is slightly more flexible than Local Plan policy GS6, in limiting development in the countryside to that which is appropriate in a rural location 'or supports thriving rural communities within it'. Albeit in broad terms, the creation of new housing supports the vitality of rural settlements. Framework paragraph 78 equally sets out how 'to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities'.
9. Furthermore, policies SS1 and SS9 of the eLP are, on a plain reading, more flexible in terms of potentially appropriate locations for new development. I note that, amongst other things, policy SS1 seeks to 'locate development where there is access to a broad range of jobs, services and facilities which are

¹ Ref. 20/00351/FL.

accessible by foot...'. That, in my view, describes circumstances here. The Planning Practice Guidance further sets out that 'a wide range of settlements can play a role in delivering sustainable development in rural areas...'.²

10. I acknowledge the proposal would not accord with the approach in Local Plan policies GS1 and GS6, nor have arguments been put to me that the proposal would be justified on account of its countryside location in policy terms. However, insofar as ensuring appropriate accessibility is concerned, on account of the foregoing reasoning no material harm would arise. The site is adjacent to the settlement boundary, next to various other dwellings, and there is comparatively good pedestrian connectivity to Wingerworth (which is the focus of significant levels of development in the eLP).
11. That is, in all likelihood, a somewhat unique combination of factors which leads me to conclude that the site is a suitable location for new housing. I also find that, by way of the above, the proposal would comply with Policy W2 of the NP and with Paragraphs 77-79 of the Framework which directs residential development to where it will enhance or maintain the vitality or rural communities.
12. Whilst the Council also referred to Policy W17 of the NP this relates to the generation of traffic and parking impacts as a result of development and so I find it is not directly relevant to this matter.

Character and Appearance

13. The appeal site is a small field at the back of the properties on New Road, and fronts Birkin Lane. The appeal site itself is bounded by mature trees and hedgerows and is accessed via a metal five-bar gate. In views across the site, from Birkin Lane, the backs of residential buildings are visible closely behind the appeal site.
14. There are also dwellings around the junction with New Road, as well as a pair of dwellings set further away from the SDL. I therefore find that the appeal site is within a transitional space between the built-up character of Wingerworth and the open countryside. It would be within this context that the new dwelling would be read, and as such I find the location would not be out of keeping or jarring with its surroundings.
15. Moreover, the proposal would result in only a single dwelling between an existing pair of dwellings outside of the SDL, and the SDL itself. As such, and given the above, it would not result in the village appearing to sprawl, or encroach into the open countryside.
16. Overall therefore, the siting of a dwelling in this location would not harm the legibility or character of the open countryside to the detriment of the character and appearance of the surrounding area. As such the proposal would comply with Policy NE1 of the LP and Policy SDC3 of the eLP which collectively require, amongst other things, development to protect the character, quality, and distinctiveness of the landscape within the district.

² Reference ID: 67-009-20190722.

Conditions

17. I have assessed the conditions suggested by the parties against the policy tests set out in the Framework and the advice in the Planning Practice Guidance. In the interests of clarity, I have, where necessary, made some changes to the wording. For certainty I have set out the timescales for the application of reserved matters and commencement of works. I have also imposed a condition to specify the matters that are reserved and not included with this outline permission, and an approved plan condition for reasons of certainty.
18. Although I note the recommendations set out in Part 4 of the Appellant's Ecological Appraisal, the level of detail is limited. I therefore find that the conditions recommended by the Council and Derbyshire Wildlife Trust, regarding the submission of further details, to be necessary in the interests of protecting biodiversity and the ecological value of the site, in accordance with Paragraph 170 of the Framework. It is necessary, noting parallel protections in the Protection of Badgers Act 1992, that the condition regarding the protection of badgers is carried out prior to the start of any works as preparatory works and the creation of foundations could unacceptably affect them. Furthermore, in order to protect wildlife, including birds, using the woodland, the imposition of conditions restricting the removal of large vegetation and installation of external illumination are also necessary.
19. At this stage it is not necessary to secure the details of the site access, any parking or manoeuvring spaces, boundary treatments and gates, a planting scheme and tree protection, or drainage. These are specifically linked to matters reserved for future consideration and should be dealt with at that point. For this reason, conditions requiring the approved details of the above matters to be followed are also not necessary at this stage.
20. In the interests of highway safety, the Council have also recommended a condition requiring space to be provided on site for storage, site accommodation, and the loading, unloading, and manoeuvring of vehicles associated with the development. However, as the development is for only one dwelling, set within a good sized plot, there is no compelling reason in that respect as to why undertaking construction on the site would necessitate such an approach. Moreover, it is not necessary to secure details of material and plant storage, or of site accommodation as these would be dependent on the scale and layout of the development which are reserved matters. As such I have not imposed this condition.

Conclusion

21. For the reasons given above, having considered the development plan as a whole, the approach in the Framework, and all other relevant material considerations, I conclude that the appeal should be allowed subject to the conditions below.

Samuel Watson

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Details of access, appearance, landscaping, layout, and scale, hereinafter called "the reserved matters", shall be submitted to and approved in writing by the local planning authority before any development is begun and the development shall be carried out as approved. The application for the approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission. The development hereby permitted shall begin no later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plan: OS MasterMap Location Plan with visibility splay.
- 3) No development shall commence until a management plan for the protection of badgers has been submitted to and approved in writing by the local planning authority. The management plan shall be informed by an up-to-date survey to identify any badger setts within 30m of the work area. The plan shall include measures to prevent badgers and other mammals from being trapped in open excavations and/or pipe culverts and shall include implementation timescale(s). The management plan shall be implemented in accordance with the details and timescale(s) as approved and shall be operated and shall remain in place for the duration of the construction phase of the development.
- 4) Before the dwelling hereby permitted is occupied, biodiversity mitigation and enhancements shall have been provided to achieve a net biodiversity gain in accordance with details that shall first have been submitted to and approved in writing by the Local Planning Authority. The biodiversity mitigation and enhancements shall thereafter be retained as such.
- 5) No removal of trees, hedgerows, shrubs, or brambles shall take place between 1 March and 31 August inclusive unless immediately preceded by a survey and report, undertaken by a competent ecologist, to assess nesting bird activity on site. The survey report shall include measures to protect the nesting bird interest on the site. The identified measures shall be implemented as set out in the report. The survey report shall be made available to the local planning authority on request.
- 6) Any external lighting shall be provided only in accordance with an external lighting scheme which shall first have been submitted to and approved in writing by the local planning authority and which shall have regard to safeguarding the adjacent woodland for bats, badgers and other nocturnal wildlife.