

Appeal Decision

Site visit made on 14 September 2021

by C McDonagh BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 October 2021

Appeal Ref: APP/A3010/W/21/3276609

Land West of Number 6 Dean's Close, Misterton DN10 4BL

- 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 T Griffiths of Griffin Design and Build Ltd against the decision of Bassetlaw District Council.
 - The application Ref 20/01478/FUL, dated 9 November 2020, was refused by notice dated 5 May 2021.
 - The development proposed is the erection of nine detached dwellings and garages including new access.
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Decision

1. The appeal is allowed and planning permission is granted for the erection of nine detached dwellings and garages including new access at Land West of Number 6 Dean's Close, Misterton DN10 4BL in accordance with the terms of application Ref 20/01478/FUL, dated 9 November 2020, and subject to the schedule of conditions detailed at the end of this decision.

Application for Costs

2. An application for costs was made by Mr T Griffiths of Griffin Design and Build Ltd against Bassetlaw District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. During the course of the appeal, the revised National Planning Policy Framework (July 2021) (the Framework) was published. Parties were provided with an opportunity to comment on the relevance of this, and I have taken any subsequent comments received into account in my determination of this appeal.
4. The Misterton Neighbourhood Plan (the NP) was made following a referendum in September 2019. The policies in the NP are therefore attributed full weight in the decision-making process.

Main Issues

5. The main issues are whether the proposal would ensure:
 - a suitable location for housing with regard to the spatial strategy for the area; and
 - a safe and suitable means of access.

Reasons

Whether a Suitable Site for Housing

6. The appeal site comprises an area of grassland surrounded by residential properties located within the village of Misterton. Policy 1 of the NP is overarching and aims to support development which enhances a balance of housing, among other things. However, part 1 of this policy indicates these aims apply to major developments which are specified as 10+ dwellings. This would not apply to the nine dwellings proposed or require the scheme before me to meet the criteria listed in part 2 of the policy.
7. It is argued the NP is focused on providing housing of a smaller size, particularly two and three-bedroom properties to meet local requirements. The proposal would provide nine four-bedroom dwellings and therefore would not meet this aim. However, the policy does not categorically restrict larger dwellings, notwithstanding these requirements which are aimed at major developments.
8. Furthermore, Policy 5 of the NP supports the development of windfall sites in principle in the village, subject to certain requirements. While the supporting text of this policy and the NP as a whole encourages the development of brownfield sites, Policy 5 does not preclude building on undeveloped land. The appeal site would constitute a windfall site in accordance with Policy 5.
9. Based on the above, the proposal would provide a suitable location for housing. This would align with the spatial development aims of policies 1 and 5 of the NP, which state, among other things, that proposals for residential development within the development boundary will be supported provided that it would not cause unacceptable harm to the residential amenity of properties in the immediate locality and would be consistent with the character and appearance of the immediate locality. The Council does not raise these issues in their reasons for refusal.

Whether a Safe and Suitable Access

10. The proposed access to the site would be taken from Dean's Close through the side garden of No.6. From here, approximately half of the new road through the development would be adopted highway, with plots 4-9 served by a private drive. Each property would have off-road parking.
11. The proposed access would be located close to a bend in the road of Dean's Close. The southern boundary of the appeal site is lined by mature trees. Drivers exiting the appeal site would therefore require caution in order to avoid collision with vehicles rounding this bend. However, these movements would be at low speeds given the size of the road and the presence of parked cars along the street. While I understand there are concerns from local residents regarding the safety of this arrangement, visibility would be ensured by an area of land being kept clear of obstructions over 900mm in height while only the existing tree in this location would be retained. This is demonstrated in the visibility splay submitted with the application which shows adequate visibility to the right.
12. On the site visit, I observed cars were parked along the opposite side of Dean's Close. While this may lead to instances where vehicles approaching from opposite ends of the road would meet, given the location of housing to the

south of the appeal site this would be an existing situation. Moreover, it is not unusual for this to occur on a residential street. In this scenario, one vehicle would be required to wait while the other passes. While the development would lead to more vehicles using the road to access and egress the site, this would likely be in the morning and late afternoon rush hours rather than a constant flow. I have no substantive evidence before me that the development proposed would cause an unacceptable risk to child safety and I note the arrangements for access were agreed with the Council's highway advisor who is satisfied with the details submitted subject to conditions.

13. Based on the above, I am satisfied the proposal would provide a safe and suitable access. This would accord with Policy DM4 of the Bassetlaw District Local Development Framework Core Strategy and Development Management Policies DPD (the DPD), which seeks to ensure new development is not to the detriment of highway safety. The proposal would also accord with the provisions of paragraphs 110 and 111 of the Framework, which seek to ensure a safe and suitable access to the site can be achieved for all users while development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Other Matters

14. The appeal site is within the setting of the Grade II Listed 'Number 7 And Attached Pigeoncote, Gringley Road'. The significance of the Listed Building derives from its aesthetic and architectural value as well as its historic association with the development of the area. However, while the appeal site would likely have historically formed part of the farm and its associated activities, it is now distinctly separate from the main buildings. The surrounding area is now suburban in character rather than rural and the development would be seen in that context. Furthermore, there would be a sizeable distance between the Listed Building and the appeal site, between which there would be little intervisibility.
15. As such I am satisfied that the proposal would have a neutral effect on, and therefore preserve, the setting of the Listed Building. Accordingly, it would meet the requirements of S66 (1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 which require the decision maker to pay special attention to the desirability of preserving the listed building and its setting.
16. I note the concerns of third parties as to the potential impacts upon undiscovered archaeological remains in the field of the appeal site. However, the archaeological advisor to the Council has assessed the proposal and found it unlikely there would be remains of importance. In any event, a condition has been agreed to implement a program of works to ensure remains would not be damaged if found during construction.
17. I am aware that several trees lining the boundary of the appeal site are subject to Tree Preservation Orders (TPO). However, the plans do not show any trees are to be felled to facilitate the development. I note the Council's tree advisor is in agreement with the scheme subject to appropriate measures being secured by condition to ensure no harm is caused to the protected trees. As such I am satisfied the proposal would not harm the health or longevity of nearby trees subject to these measures.

18. I acknowledge several neighbouring residents are concerned that the proposal would cause harm to their living conditions, particularly by way of loss of privacy and outlook. However, there is no substantive evidence before me that this would occur. Moreover, the Council assessed this as part of their report to the planning committee and concluded this was acceptable. This was due to the separation distance of over 30m from nearby dwellings and conditions attached to the recommendation to agree suitable boundary treatments. Based on all I have seen and read, I have no reason to disagree with this assessment.
19. There are a number of objections from interested parties citing a range of concerns. I have addressed the concerns relevant to the proposal in the preceding paragraphs. However, the site is in an accessible location close to everyday services, facilities and public transport. Whilst I note the contention that the Council can demonstrate a 5-year supply of deliverable housing, this should not be regarded as a ceiling to development. The proposal would provide nine new dwellings to support the supply of housing in the local area and there would be social and economic benefits from the investment in the construction of the dwellings and subsequent occupation and spending associated with future residents.

Conditions

20. The Council has suggested a number of conditions in the light of the appeal being allowed. The appellant has not objected to the suggested conditions and has agreed to those pre-commencement stipulations where relevant. I have, however, altered the wording and order of conditions where necessary to better reflect the advice set out in the Planning Practice Guidance concerning the use of planning conditions, without changing their overall intention.
21. Alongside the standard time limit and approved plans, conditions concerning external facing materials and boundary treatments are necessary in the interest of the character and appearance of the area and to preserve the setting of the nearby Listed Building. It is also necessary that suitable measures are in place to protect nearby trees while I have also imposed a condition which requires agreement of biodiversity enhancements to ensure the development integrates sensitively with its surrounding in respect of its environmental impacts.
22. Given the requirement for a new access and internal site road layout, there are necessary conditions to ensure a safe and suitable access can be achieved for all users and to ensure highway safety is not compromised in accordance with paragraphs 110 and 111 of the Framework. This includes a detailed Construction and Environmental Management Plan (CEMP) to minimise disruption to nearby residents and to the surrounding highway network.
23. I have imposed a condition specifying that a programme of archaeological investigation and recording is undertaken to ensure remains are not damaged, alongside a condition which requires the implementation and maintenance of an agreed drainage scheme.
24. A condition is necessary to ensure compliance with the revised Framework in paragraph 112 regarding the need for the charging of plug-in and other ultra-low emission vehicles in safe, accessible and convenient locations.

25. A condition is also necessary to limit working hours of construction staff on site to those times specified to ensure the living conditions of nearby occupiers are not harmed by noise or disturbance in unreasonable hours.
26. It is essential that the requirements of conditions 4, 6, 7, 8, 9, 10 and 11 are agreed prior to any work commencing to ensure an acceptable form of development in respect of highway safety, the disposal of foul and surface water, preserving the character and appearance of the area, preserving potential archaeological remains and the protection of trees.

Conclusion

27. For the above reasons, having taken account of the development plan as a whole and all other relevant material considerations, I conclude that the appeal should be allowed subject to the conditions below.

C McDonagh

INSPECTOR

Schedule of Conditions

1. The development hereby permitted shall begin not later than 3 years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans:

Site Location Plan scale 1:1250; Drawing No. 111/20/1E Site Layout; Drawing No. 111/20/2 Plots 1 and 9; Drawing No. 111/20/3 Plots 2 and 3; Drawing No. 111/20/4 Plots 4 and 5; Drawing No. 111/20/5 Plots 6 and 8; Drawing No. 111/20/6 Plot 7; Drawing No. Garage Detail; Drawing No. 1091_GRG 01 Rev.A Tree Survey; Drawing No. 1091_GRG 02 Rev.A Tree Constraint Plan; Drawing No. 1091_GRG 03 Rev.A Tree Protection Plan.
3. No development shall take place, with the exception of site clearance, until such time as details of the replacement parking space for No.6 Deans Close, as indicted on plan reference 111/20/1E, have been submitted to and approved by the Local Planning Authority. The parking space shall be a minimum of 5.5m long x 3.3m wide and shall include 2.4m x 17m visibility splays. The parking space and visibility splays shall be in place prior to any dwelling hereby approved being occupied. Thereafter, nothing shall be planted, erected or be allowed to grow on the area of land forming the visibility splay that would obstruct visibility from a height between 0.6m and 2.0m and 2.0m above carriageway level.
4. No development shall take place until such time as details of the 2.4m x 12m visibility splay to the east of the driveway serving Plot 9 has been submitted to and approved by the Local Planning Authority. The approved details shall be implemented prior to the first occupation of any of the hereby approved dwellings. Thereafter, nothing shall be planted, erected or be allowed to grow on the area of land forming the visibility splay that would obstruct visibility from a height between 0.6m and 2.0m above carriageway level.
5. No development shall take place, with the exception of site clearance, until details of the proposed arrangements and plan for future management and maintenance of the proposed streets, including associated drainage arrangements, have been submitted to and approved by the Local Planning Authority. The streets and drainage shall for the lifetime of the development be maintained in accordance with the approved private management and maintenance details.
6. No development shall take place until details of the proposed arrangements and plan for future management and maintenance of any hedgerows, trees, and vegetation between No.6 Deans Close and Plot 9 and to the east of Plot 1 has been submitted to and approved in writing by the Local Planning Authority. The hedgerows, trees, and vegetation shall be maintained in accordance with the approved details whilst the development remains in existence.
7. No development shall take place until such time as the trees covered by Tree Preservation Orders on the development site have been protected, in a manner to be submitted to and approved in writing by the Local Planning

Authority. The trees shall be protected in the agreed manner for the duration of building operations.

8. No development shall take place until such time as full details of the manner in which foul sewage and surface water are to be disposed of from the site have been submitted to and approved in writing by the Local Planning Authority. The scheme shall be implemented in accordance with the approved details before the first occupation of any of the hereby approved dwellings.
9. No development shall take place until a scheme for tree planting on, and landscape treatment of, the appeal site is submitted to and approved in writing by the Local Planning Authority. The agreed scheme shall be fully implemented within nine months of the date when the last dwelling on the site is first occupied. Any trees or shrubs removed, dying, being severely damaged or becoming seriously diseased within five years of planting shall be replaced by trees or shrubs of a size and species similar to those originally required to be planted.
10. No development hereby permitted shall take place until a Construction and Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include details of the following measures during construction:
 - (i) dust mitigation measures,
 - (ii) hours of work,
 - (iii) details of site operatives roles, responsibilities and training,
 - (iv) monitoring and reporting arrangements
 - (v) emergency response protocols,
 - (vi) community and stakeholder relations
 - (vii) a construction traffic management plan
 - (viii) details of all permits, contingency plans and mitigation measure that shall be put in place to control the risk of pollution to air, soil or water, protect biodiversity and avoid, minimise and manage waste.

The development hereby permitted shall be undertaken and maintained in accordance with the approved CEMP.

11. No development hereby permitted shall take place until a programme of archaeological work, including a written scheme of investigation, has been submitted to and approved in writing by the Local Planning Authority. The development hereby permitted shall be undertaken in accordance with the approved programme of archaeological work.
12. No development shall take place above damp proof course level until details/samples of the materials to be used in the construction of the external surfaces of the dwellings hereby permitted have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details/samples.
13. A scheme and timetable for the implementation of biodiversity enhancements shall be submitted to and approved in writing by the Local Planning Authority, before any construction occurs above damp-proof course level. The biodiversity enhancements shall include:

- i) The provision of bird and bat boxes; and
- ii) The installation of hedgehog friendly boundary treatments.

The approved biodiversity enhancements shall be completed and available in accordance with the agreed scheme and timetable.

14. No dwelling hereby permitted shall be occupied until such time as the access and parking area to that dwelling and the parking space to No.6 Deans Close have been provided in a bound material (not loose gravel) and which shall be drained to prevent the unregulated discharge of surface water onto adjacent roads and footways. The access and parking areas shall remain as such thereafter.
15. Prior to plots 4 to 9 being occupied the communal bin store detailed on plan reference 111/20/1E shall have been provided and surfaced in a bound material. The communal bin store shall be retained as such and for its intended use thereafter.
16. No dwelling hereby permitted shall be occupied until such time as the visibility splay at the junction with Deans Close as detailed on plan reference 111/20/1E is in place and has been incorporated into the Deans Close footway.
17. No dwellings hereby permitted shall be occupied until the roads and footways affording access to those dwellings have been completed up to binder course level.
18. No dwelling shall be occupied until such time as any vegetation encroaching onto the street layout as detailed on plan reference 111/20/1E has been removed up to a height 2.6m above the footway and 5.3m above the carriageway within 0.5m of the edge of carriageway. The vegetation shall be maintained above these heights in accordance with the approved maintenance and management arrangements whilst the development remains in existence.
19. Prior to the first occupation of any of the dwellings hereby permitted, details of boundary treatments of the application site boundary and individual plots shall be submitted to and approved in writing by the Local Planning Authority. The approved details shall be implemented before the occupation of the dwelling to which that part of the boundary treatment relates.
20. Prior to the occupation of the dwellings hereby permitted, details of the provision made for Electric Vehicle (EV) and Ultra Low Emission Vehicle (ULEV) charging points within the site layout shall be submitted to and approved in writing by the Local Planning Authority. The approved EV and ULEV charge points shall be installed prior to the first occupation of the dwellings hereby permitted and thereafter maintained and retained as such.
21. All vehicles preparing to leave the site during the construction period shall have their wheels thoroughly washed should they be displaying signs of mud or debris and a mechanically propelled road sweeper shall be employed should mud or debris be transported onto the public highway.

22.No works relating to site preparation or construction shall take place outside 08:00 hours to 18:00 hours Monday to Friday; 09:00 hours to 13:00 hours on Saturday and not at all on Sundays, Bank Holidays or Public Holidays.

END OF SCHEDULE