



Appeal Decision

Site visit made on 14 June 2022

by Alison Scott (BA Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th July 2022

Appeal Ref: APP/J3015/W/22/3290612

Land South of 50 Pinfold Road, Newthorpe, Nottinghamshire NG16 2FT

- 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 Stones Sankey Developments Limited against the decision of Broxtowe Borough Council.
 - The application Ref 20/00687/FUL, dated 28 September 2020, was refused by notice dated 10 November 2021.
 - The development proposed is Construct 22 dwellings.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The appellant has submitted a revised layout plan with their appeal CF/MS/21/16/01 Revision D. I could see from the list of plans issued to me that this plan reference has had no formal consultation. However, given the overall suite of plans that has been consulted upon, I consider its content would not unduly prejudice the Council or third parties if I were to take this plan into account. To that end, it forms part of my overall assessment of the scheme.

Main Issues

3. The main issues are whether or not the proposal would:
 - Lead to harm arising to the living conditions of the occupants of Baldwin Street with particular regard to overlooking and a loss of privacy, sense of overbearing and overshadowing; and
 - As a consequence of non-adopted internal roads, lead to an adverse effect on future occupants of the development.

Reasons

4. The appeal site is an overgrown parcel of land between Pinfold Road and Baldwin Street within the residential area of Newthorpe, surrounded on three sides by residential dwellings. It is elevated from Pinfold Road and the ground across the site is uneven and rises and falls in many directions. The last use of the site has been identified as a paddock.
5. Permission in outline has been granted for houses at the site although this has since lapsed. Therefore, the principle of housing on the site is accepted by the Council and I have no reason to come to a different view.

Living Conditions

6. The area in contention between the parties lies with the impact of the proposal on the living conditions of occupants of bungalows on Baldwin Street to the east of the appeal site.
7. Core Strategy Policy 10 and Policy 17 of the Local Plan both aim to secure high standards of place making, design and amenity levels. Living conditions should be safeguarded for existing neighbouring residents. In this regard, adequate space between buildings should be retained to avoid impacts of overlooking and poor outlook.
8. The Council points to the fact that adequate garden depths should be designed into new housing schemes to ensure both functional external space as well as to safeguard the living conditions of neighbouring occupants. There is nothing before me to contradict their view that a garden with a minimum 10m depth is appropriate. Whilst a number of these proposed gardens are in excess of this depth, a substantial number would not be, in particular those that are within close range of the existing residential bungalows on Baldwin Street.
9. The proposed houses closest to Baldwin Street are designed as two storey in height and include a house type with a dormer window within the roof slope which effectively creates more bulk to its roof form.
10. The bungalows of concern along Baldwin Street are all similar in character and gently follow the slope of the road from north to south with corresponding slightly staggered ridge lines. I could see from my visit the close relationship between the appeal site and these bungalows. A number of detached outbuildings further encroach into their garden space. In addition, I observed that some bungalows have been extended to the rear such that habitable room windows lie close to the site boundary. The full extent of these additions has not been indicated on the plans before me.
11. The appellant has provided site sections to accompany the development. These demonstrate the changing land levels across the site and levels with Baldwin Street. Some of the proposed houses would sit on levels higher than bungalows on Baldwin Street. As a consequence of this, the proposed separation distance, low-level nature of a bungalow combined with a small garden space, would, to my mind, cause a sense of oppressiveness to their occupiers.
12. Given the positioning of some of the proposed houses, large swathes of glazing serving habitable rooms would face directly towards the rear gardens and elevations of the bungalows. Due to the land levels across the site that I experienced on the ground, and the limited site sections that have been provided with the appeal, I am not convinced that these neighbouring gardens and rear elevations would not be substantially overlooked to the detriment of occupants, despite a 21m separation distance or the proposed perimeter boundary treatment.
13. In addition, the proposed houses would be positioned to the west of Baldwin Street. There would be an inevitable loss of sunlight to the rear elevations and gardens in the afternoon to these bungalows, further compromised by the change in land levels.
14. Therefore, as a combination of factors, against the modest scale of the bungalows, their low-level outlook, small rear gardens, and orientation with the

appeal site, the facts on the ground including land levels across the appeal site, all these things considered, lead me to the view that harm would arise to the occupants of neighbouring bungalows.

15. Therefore, to conclude on this main issue, the proposal would not meet the expectations of Policy 10 of the Broxtowe Aligned Core Strategy 2014 and Policy 17 of the Part 2 Local Plan 2019 in their combined aims to protect the amenity of nearby residents.

Non-adoption of roads

16. The area in contention between the parties relates to the appellant's intention for the internal estate roads to be private roads and thus not adopted by the Council.
17. I have read the Council's Highway's Authority desire for the estate roads to be adopted by the Council who would be responsible for their management and maintenance thereafter. This is due to the scale of the proposal. However, they do not formally object to the development and offer a number of conditions should I be minded to approve the scheme.
18. A legal agreement has been presented with the appeal that sets out the requirement for a Private Road Scheme including details of future management and maintenance of the roads in perpetuity and any transfer of this to a management company. On that basis, the owners of the properties would become responsible for the costs associated with such maintenance and management through a service charge attached to their property. The details of this are further to be agreed between the parties, as set out within the legal agreement.
19. There is nothing before me to require the appellant to seek adoption of the roads within the scheme. Furthermore, there is little evidence provided by the council to demonstrate that maintenance and management by a management company would not deliver a suitable highway standard to serve the development.
20. As the homeowners of the development would be responsible for on-going costs associated with maintenance and management, through the terms and conditions laid out by independent management company, the future buyers of houses would be aware of the legal agreement attached to the development and their obligation to on-going costs, before they decide to commit to buying a house.
21. There is nothing before me to lead me to conclude that pedestrian safety would be severely compromised as a result of the development or that street lighting that is intended to be implemented at the site, would not be acceptable. There is no compelling evidence before me to demonstrate the site would lead to adverse flood risk on or off site, or lead to drainage issues.
22. Therefore, all things considered, to conclude on this main issue, I find as a consequence of the roads being private estate roads, would not lead to a detrimentally adverse effect on highway safety leading to harm arising to the living conditions of the future occupants. It would therefore meet the aims and objectives of Policy 10 of the Broxtowe Aligned Core Strategy 2014 and Policy 17 of the Part 2 Local Plan 2019, in their combined aims to secure successful place making and to protect the amenity of occupiers.

Other Matters

23. I have found that the proposal conflicts with the development plan in so far as it fails to safeguard the living conditions of the neighbouring occupants of Baldwin Street required through the objectives of planning policy. With regards to the other main issue of non-adoption of internal roads, it would also comply with local policies. It would cause no adverse effects to the character and appearance of the local area, flood risk and protect biodiversity. The development would therefore comply with other relevant Local Plan and Core Strategy policies.
24. Overall, despite its compliance with certain policies, in the round, I find the proposal conflicts with the development plan when taken as a whole. This is a matter of very substantial weight.
25. I will now consider whether there are other material considerations that would indicate that my decision should be made otherwise than in accordance with the development plan.
26. The house builder is a small-scale local builder. However, there is no evidence before me to demonstrate the houses would be built out over a short period of time, nor do I give weight in the planning balance to his reputation of delivering houses.
27. The Coronavirus pandemic gives rise to home working. The need for 'socially distanced workspace' has been brought to my attention by the appellant although I do not consider this has a significant bearing on the proposal. The houses would be designed to be adaptable as far as possible for changing occupiers needs, designed to be energy efficient and follow the Secured By Design principles and the Building for Life standard. Those points are not dependent on the specific detailed design and layout of the scheme and are therefore of limited weight.
28. The development would remove overgrown land from the local area although in its current condition, I do not find the site to be particularly visually disagreeable within the street scene.
29. As a housing scheme, it has been designed to gain maximum natural light. However, this is a neutral matter that neither weighs for or against the proposal. Issues of its design to encourage social interaction are subjective and I apply limited weight to this.
30. I do not have sufficient evidence before me to comment on the significance of the 'abandoned' Toton HS2 Hub on the local area, or subsequent implications on housing delivery within the local area. Furthermore, there is little evidence presented that there would be a real threat to green belt land to accommodate new houses.
31. Taking into account the benefits associated with the proposal, I appreciate the contribution the scheme could make in boosting the supply of housing in the Borough given the shortfall in Broxtowe's housing delivery and the future need for housing. There is nothing before me to contradict the appellant's findings that the Council cannot demonstrate a five year supply of deliverable housing sites.

32. However, the contribution made by this scheme, confirmed by the appellant as a 'modest sized site' would be small, not so sufficiently great an impact as to make a meaningful difference to address this shortfall.
33. The benefits offered by the proposal in terms of its location close to local facilities, services and amenities weighs in its favour. It would inevitably create employment during construction phase and local spend. The Council would gain from financial contributions arising from new houses within the Borough. As a combination of factors, they would bring relatively modest benefits and as such, in my judgement, attract only moderate weight.
34. Footnote 8 of the Framework establishes that the policies of the development plan which are most important for determining the application are out-of-date in respect of a 5 year housing land supply, Paragraph 11 of the Framework indicates that in such circumstances the presumption in favour of sustainable development is engaged. This means granting permission for the proposal unless:
- i) the application of policies in the Framework that protect areas or assets of particular importance provide a clear reason for refusing the development proposed; or
 - ii) any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework taken as a whole.
35. Whilst there are identified benefits associated with the proposal, the most significant of this would be the addition of twenty-two units that would add a limited contribution to the supply of local housing. This addition would however come at the expense of the living conditions of the occupants of Baldwin Street. It would therefore not outweigh the substantial and adverse impact of harm arising from the development's inability to safeguard the living conditions of local occupants.
36. Consequentially, the adverse impact of the scheme in respect of harming the living conditions of the neighbouring occupiers would significantly and demonstrably outweigh the benefits of the proposal when assessed against the policies of the Framework when taken as a whole. Under Framework paragraph 11(d), the appeal proposal would not benefit from a presumption in favour of sustainable development.
37. The appeal is therefore dismissed.

Alison Scott

INSPECTOR

