
Appeal Decision

Site visit made on 2 August 2022

by David Murray BA (Hons) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 August 2022

Appeal Ref: APP/T2405/W/22/3292797

Land adjacent to The Bungalow, Forest Road, Huncote, Leicestershire, LE9 3LE.

- 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 C Harris against the decision of Blaby District Council.
 - The application Ref 21/0568/OUT, dated 19 April 2021, was refused by notice dated 1st October 2021.
 - The development proposed is the erection of a dwelling.
-

Decision

1. The appeal is dismissed.

Preliminary and procedural matters

2. The application is in outline format with all detailed matters reserved for subsequent approval if outline permission is granted. A sketch perspective of a dwelling has been submitted by the appellant which I have treated as for illustrative purposes only.
3. The appellant's architect/agent says that the proposals should be judged against the provisions of the development plan and national policy as they existed at the time of the submission of the planning application (April 2021) but that is wrong in law and I have to consider and apply these documents as they exist now.
4. The appellant has made an application for costs against the Council. This is the subject of a separate decision.

Main Issues

5. The main issues are:
 - Whether the principle of the development proposed accords with the strategy in the development plan and would be sustainable development;
 - Whether the proposal amounts to an acceptable form of 'infilling'.
 - Whether development in the vicinity of the site would result in a poor and unsatisfactory residential environment for the occupiers by virtue of odour and noise; and
 - The effect of the proposal on highway safety.

Reasons

Background

6. The appeal site comprises a relatively narrow rectangle of land which lies alongside The Bungalow and to the south of commercial premises occupied by Mole Aggregates (also referred to as Mole Groundworks) and with a further dwelling on land to the north. On the eastern side of Forest Road is a large complex based on kennels and an animal welfare centre, together with a farmstead to the south. Apart from this physical development around the appeal site the surrounding area is mostly countryside with a rural character.

Accord with the development strategy

7. The development plan includes the Core Strategy (2013) (now referred to as CS) and the Blaby District Local Plan (Delivery) Development Plan Document (2019) (LP) and the Fosse Villages Neighbourhood Plan (NP) made in 2021.
8. In general terms the CS seeks to focus new development in the most sustainable locations, primarily towns and villages, and land adjoining large built up areas. CS Policy CS18 indicates that in areas designated as countryside outside settlements planning permission will not normally be granted for built development, or other development where this would have a significant adverse effect on the landscape, but permission may be granted for small scale employment and leisure development including dwellings essential to these needs. Moreover, LP Policy 2 sets out further criteria for essential dwellings for agriculture and forestry. Policy FV8 of the NP deals with 'Windfall Housing' and limits development outside settlements to similar exceptions as the LP but also includes part B - small scale housing in the most sustainable locations assessed against the need to retain the countryside.
9. It is clear to me that the appeal site lies in the countryside well away from the nearest settlement of Huncote, which the Council says lies 1.2km away, and the land around the appeal site is also designated as 'countryside' on the LP Policies Map. As the proposal involves new built development that has not been shown to fall within one of the essential categories for a new dwelling, I find that it would conflict with the main development strategy put forward in the development plan.
10. In terms of the landscape impact of the proposal, I concluded at my visit that this would largely be confined to the enclave around the buildings along the local part of Forest Road as mentioned in paragraph 5 above and as depicted in the agent's Site Analysis plan. While I am only dealing with the principle of development with all detailed matters reserved, it appeared to me that there is little width to the appeal site and a detached dwelling here would be likely to appear visually cramped between the end of The Bungalow and the end wall of the adjoining business premises. As such, a dwelling here would be likely to have a significant adverse effect on the rural character of the area but the area in which that harm would be apparent to the public realm would not be extensive.
11. Further, in terms of the location of the site it lies away from day to day facilities and public transport and Forest Road is largely unlit and without continuous footpaths. I note the appellant's agent's submission that both the villages of Thurlaston and Huncote can be reached within 5 minutes by bicycle,

but considered in the round it appears to me that with few realistic alternative means of travel the occupiers of the new dwelling would be likely to be mostly dependant on a car for travel. On this basis I find that the proposal would not be consistent with achieving a sustainable pattern of growth.

12. Overall on this issue I conclude that the proposal would conflict with the development strategy set out in the development plan as the form of residential development proposed has not been shown to be essential in this countryside location; it would be likely to have a cramped appearance which would significantly harm the character of the immediate area, and be located in an area away from services and facilities so as not to be a sustainable location. There would be conflict with policies CS18, DM2 and FV8.
13. The appellant refers to another case at Shuttleworth Lane where it is said that a dwelling was approved in similar circumstances to the appeal site. However that decision appears to have been made in 2011 when different local and national policy applied and I am unable to give it much weight in this case.
14. The appellant's agent also refers to the case of *Wood v SSCLG [2015] EWCA Civ 195* but this appears to relate to an issue over whether development was within a village settlement boundary and whether that was determinative, but the circumstances of that case appear to be materially different to the appeal site which is well away from the nearest settlements.

Whether an appropriate form of 'infilling'

15. The Council indicates that the term 'infilling' is not part of the strategy in the development plan but it is a central part of the appellant's case. As the appellant says the term is mentioned in the NPPF regarding Green Belts where in paragraph 149 exceptions to 'inappropriate development' in the Green Belt include 'Limited infilling in villages' and limited infilling elsewhere where there is no greater impact on openness. These provisions do not apply to the appeal site as it does not lie in the Green Belt nor is there an issue about openness. However, as mentioned in paragraph 9 above I find that the appeal site is so narrow that it is unlikely that a house could fit in here without appearing cramped in its surroundings very close to The Bungalow and the Mole Aggregates site. Therefore even if the term 'infilling' did apply locally the site is not a gap in a frontage of similar properties where a new dwelling could be consistent with its neighbours in scale and appearance. A new dwelling would therefore not maintain the rural character of the area and 'infilling' on the site is not appropriate.

Effect on living conditions

16. This issue is concerned with the relationship between the plot of the proposed dwelling and the adjacent site at Mole Aggregates. I understand from the representations that there is also a permission granted under 2019/CM/0184/LCC (and others) for the additional use of this land for inert waste operations, although I was not able to see from public land if that permission had been implemented. The Council advises that the use would be located in the southern corner of the commercial site adjacent to the appeal site and includes a 3m high screen wall and planting along the boundary. The Council says that the commercial site could be expected to cause noise and odours which could harm the living conditions of the occupiers of the dwelling proposed.

17. At the time of my visit I heard the movement of heavy vehicles within the Mole Aggregates site and I would describe the noise as loud and frequent and which could disturb a residential environment. I also noted the 3m high screen fence close to the boundary and a higher structure with canvas sides which appeared to be used to store materials.
18. The appellant says that the permissions granted at Mole Groundworks included acoustic reports which concluded that the impact on The Bungalow were not unacceptable and it would now be preposterous to say that the same impacts constituted a reason to refuse the dwelling proposed. However it seems to me that the assessment of the effect on The Bungalow took into account the gap between the existing dwelling and the commercial site while the current proposed seeks to site the dwelling within this gap. The circumstances of the cases are now materially different.
19. Although I recognise that a new dwelling could be built to incorporate acoustic insulation there is no detailed evidence before me as to what the level of harm would be in terms of noise or odour and what steps can be taken to mitigate this. As the proposal stands I find that it has not been demonstrated that the proposal meets the tests set out in Policy CS2(b) in terms ensuring a satisfactory relationship with nearby uses of And DM2 and part (c) of Policy FV6.

Effect on highway safety

20. The proposal is in outline and details of the access to the development are reserved for subsequent consideration. The Council recognises this but say that there was insufficient evidence submitted with the application to establish that a safe new access could be created for the new development.
21. Access would need to be to Forest Road which is subject to the national speed limit for single carriageway roads. The Council does not indicate what visibility splays would be needed for a new access at this site but it appeared to me that there was reasonable visibility in both directions from the centre of the site frontage. I am therefore satisfied that the details of the access can be addressed at reserved matters stage.

Planning balance

22. On the main issues I have found that the principle of the development of a new dwelling in this countryside location would not accord with the strategy in the development plan and would be likely to have a cramped and significantly harmful effect on the character of the area. It would also be mainly located away from services and would not help achieve a sustainable pattern of growth. Although the term 'infilling' does not apply locally even if it did the proposal would not be an appropriate form. Moreover, there is no evidence to demonstrate that the living conditions of the occupiers of the new property would not be harmed by the operation and use of the adjoining commercial premises.
23. These factors constitute significant adverse effects, but they have to be balanced with other considerations. I have noted the other case referred to and the legal case mentioned by the appellant, but these are not of such relevance that they can be given much weight in the balance.

24. The appellant says that the proposal would be sustainable development as encouraged by the National Planning Policy Framework but I conclude that it is not because of the harm that the development would cause, the poor accessibility of the site in sustainability terms and the likely effects on the potential occupiers from noise and odours.
25. Overall I find that the conflict with the development plan and the harm that would arise are not outweighed by other factors which means that the appeals should not be allowed.

Conclusion

26. For the reasons give above I conclude that the appeal should be dismissed.

David Murray

INSPECTOR