

Appeal Decision

Site visit made on 26 September 2022

by M Ollerenshaw BSc(Hons) MTPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 November 2022

Appeal Ref: APP/A2470/W/21/3287674

Land off Park Road, Ketton, Rutland

- 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 Vistry Homes Ltd against the decision of Rutland County Council.
 - The application Ref 2020/0942/OUT, dated 13 August 2020, was refused by notice dated 14 July 2021.
 - The development proposed is 'outline application with all matters reserved except for means of access, for residential development of up to 75 dwellings with associated public open space, landscaping and infrastructure'.
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Decision

1. The appeal is allowed and outline planning permission is granted for outline application with all matters reserved except for means of access, for residential development of up to 75 dwellings with associated public open space, landscaping and infrastructure at Land off Park Road, Ketton, Rutland in accordance with the terms of the application, Ref 2020/0942/OUT, dated 13 August 2020, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The site address used above is taken from the Council's decision notice. I note that the appellant has raised no specific objection to the use of this address, which they have subsequently used in their statement.
3. The application was submitted in outline with access only to be determined and all other matters reserved. I have determined the appeal on this basis. I have regarded all elements of the drawings submitted as indicative apart from the access details.
4. There is one reason for refusal which relates to the location of the proposed development outside of the development limits for Ketton where new housing has to be demonstrably essential for a rural worker or similar operational needs. However, following the withdrawal of the new local plan for Rutland from examination in September 2021 a short time after the refusal of the appeal proposal, the Council now accepts that it is unable to demonstrate a five year housing land supply. It considers that on application of paragraph 11 d) of the National Planning Policy Framework (the Framework), the reason for refusal would fall away and therefore it is not contesting the appeal.
5. After the appeal was submitted, a legal agreement under s106 of the Town and Country Planning Act 1990 was submitted. It has been signed and dated by the relevant parties and provides for an on-site affordable housing component and open space.

Main Issue

6. The main issue is whether the proposed development would accord with development plan policies relating to the location of development.

Reasons

7. The appeal site is a rectangular parcel of agricultural land located to the south-west of the centre of Ketton village. It is bound to the south-east by existing residential properties on Park Road and Timbergate Road, and by properties on Bartles Hollow and Wytchley Road to the north-east. There is an area of mature woodland to the south-west of the site and agricultural land to the north-west. The site generally slopes down from the south-western side to Bartles Hollow.
8. Ketton offers a range of facilities and access to public transport commensurate with its status as a Local Service Centre, including a primary school, post office and general store, public house and library, all of which are within reasonable walking distance of the site. Whilst there is no secondary school or medical facilities in the village, it would be possible to walk to the bus stops on Empingham Road, which provide services to Stamford and Uppingham. Taking these factors into account, I consider that future occupiers of the development would not be wholly reliant on the use of private vehicles to access basic services and amenities.
9. The site lies adjacent to but is outside of the defined settlement limits of Ketton and is therefore within the open countryside for the purposes of planning policy. Policy CS4 of the Core Strategy Development Plan Document (2011) (CS) seeks to direct development towards the most sustainable locations in accordance with the settlement hierarchy, with the town of Oakham being the key focus for new development, and to limit development in the countryside to that which has an essential need to be located there and is restricted to particular types of development to support the rural economy and meet affordable housing needs.
10. Policy SP6 of the Site Allocations and Policies Development Plan Document (2014) (SAP) states that housing development will not be permitted in the countryside except where it can be demonstrated to be essential to the operational needs of agriculture, forestry or an established enterprise requiring a rural worker; or for affordable housing to meet an identified local need. The proposed development would not meet any of the exceptions within Policies CS4 or SP6.
11. The proposal would not therefore accord with development plan policies which relate to the location of new development and would conflict with Policy CS4 of the CS and Policy SP6 of the SAP. It would also be contrary to the policies of the Framework that relate to rural housing.
12. The appellant has set out why they consider that Policies CS4 and SP6 are inconsistent with the Framework. In any case, the Council accepts that it is currently unable to demonstrate a five year supply of land for housing, measured against their housing requirements. Based on the evidence before me the shortfall in housing supply is significant with the Council only able to demonstrate 4.1 years of deliverable land for housing supply.
13. Policy CS4 of the CS and Policy SP6 of the SAP are relevant policies for the supply of housing and given there is no five year supply they cannot be regarded as being up to date. In these circumstances paragraph 11 of the

Framework states that the presumption in favour of sustainable development means that planning permission should be granted, unless any adverse impacts would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole or unless specific Framework policies indicate development should be restricted, which I return to below.

Other Matters

14. I have taken careful account of the representations of those nearby in respect of a range of other matters. It is stated that the infrastructure is not in place in terms of schooling, transport, health facilities and electricity. However, the Council have not objected to the proposal on these grounds and I have no substantive evidence before me to persuade me that local services and infrastructure would be unable to cater for the proposed development.
15. It is stated that there are already three designated sites for residential development in the village which would total 60 to 65 new dwellings. However, as I understand it, these sites were proposed for allocation as part of the submission draft version of the new local plan, which was subsequently withdrawn by the Council. Ketton and Tinwell had a Neighbourhood Area designated in September 2018, but the evidence indicates that a draft Neighbourhood Plan has not yet been published and I therefore give no weight to this matter.
16. Whilst the character of the site would change, the illustrative masterplan shows that the development would be well related to existing built form on Bartles Hollow, Park Road and Timbergate Road and the layout of the development would reflect existing neighbouring development. The illustrative masterplan indicates a large area of open space on the higher part of the site to the south-west with the proposed dwellings predominantly being on the lower part which would reduce adverse impacts on the character and appearance of the surrounding area.
17. Given that the proposal is in outline form, precise details of the development, including its siting, layout and orientation, are not before me for consideration. However, on the basis of the size of the site and the likely spacing between the development and the neighbouring properties, I consider that a satisfactory layout and scale of development could be accommodated within the site which would protect the living conditions of the neighbouring occupants. Any noise and disruption caused during the construction phase of the development as a result of additional vehicle movements would be for a temporary period only and appropriate control could be exercised via measures specified in a Construction Method Statement.
18. The proposal would have the potential to increase traffic congestion in the village. However, the Council and Highway Authority have not objected to the proposal on grounds of highway safety. The appellant's survey of Empingham Road indicates that there is sufficient capacity on that road and the crossroads to cater for the development. I have no substantive evidence before me that the level of traffic generated by the development would result in significant additional congestion to the local road network. A single access with safe junction can be formed at Bartles Hollow.
19. The evidence before me indicates that the site is within Flood Zone 1, where there is the lowest probability of flood risk. A sustainable drainage scheme for

the site would be completed in accordance with the submitted details which would mitigate flood risk.

20. The Extended Phase 1 Habitat Survey found that the site could be developed in a manner that would not have any significant impact on local biodiversity. A number of recommendations have been made in relation to precautionary mitigation measures and biodiversity enhancements. On this basis, there would be no ecological reason to dismiss this appeal.
21. The development would result in the loss of some agricultural land. However, I do not have detailed evidence to demonstrate that the development of this site would have significant consequences due to the loss of the field.
22. A further refused application for the same quantum of development on the site has been brought to my attention¹. However, that application is not a matter before me nor are the merits of it. My consideration of this appeal relates solely to the planning merits of the appeal proposal.
23. A number of other issues have been raised by interested parties and consultees which have been taken into consideration but neither alone nor in combination do they amount to a reason to dismiss the appeal. Conditions can be imposed to address a number of the issues raised.
24. The submitted s106 agreement provides for a minimum of 30% of the total number of dwellings to be affordable housing. The s106 agreement also secures the provision of public open space and its future management and maintenance. I am satisfied that the planning obligations contained within the s106 agreement are necessary to make the development acceptable, directly related to the development and fairly and reasonably related in scale and kind to the development. They meet the tests set out within Regulation 122 of the Community Infrastructure Levy Regulations 2010 and Framework paragraph 57.

Conditions

25. I have had regard to the conditions suggested by the appellant and the Council. In imposing conditions I have had regard to the relevant tests in the Framework, Planning Practice Guidance and of statute. In that context I have modified the wording of some of the proposed conditions without altering their fundamental aims.
26. Given the outline nature of the application, conditions are necessary relating to commencement and the submission of the reserved matters. This is to comply with the requirements of planning legislation. In the interests of certainty, I have added a condition to control the maximum number of dwellings.
27. To protect the living conditions of neighbouring residents, a pre-commencement condition is necessary to agree the details of a Construction Method Statement, including measures to control dust and noise during the construction phase of the development.
28. I have attached a condition to secure the implementation of a programme of archaeological work in accordance with a written scheme of investigation in the interests of archaeological recording.

¹ Council ref 2021/1452/MAO

29. In order to avoid any localised flooding, it is necessary to impose a condition relating to the submission and approval of details and management of a surface water drainage scheme.
30. In order to preserve the character and appearance of the area, a condition is required in relation to samples or details of materials.
31. In the interests of preserving and enhancing biodiversity, a condition is necessary to secure the implementation of the mitigation measures and biodiversity enhancements outlined in the Extended Phase 1 Habitat Survey. Further conditions are required to ensure the adequate protection of trees and implementation of the landscaping in order to protect the character and appearance of the area.
32. A condition to require the provision of the pedestrian/cycle link from the site to Park Road is necessary to ensure that users are able to access the site in a safe and appropriate manner.

Planning Balance and Conclusion

33. I find that the proposed development would not accord with development plan policies which relate to the location of new development. In particular, it would conflict with Policy CS4 of the CS and Policy SP6 of the SAP. However, due to the significant shortfall in housing land supply, these policies cannot be considered as being up to date. As such, they attract limited weight.
34. The proposal would provide a number of social and economic benefits which would include the provision of up to 75 new dwellings, of which 30% would be affordable housing. Given that the Council cannot demonstrate a five year housing land supply, I give this matter significant weight in favour of the proposal. In addition, employment opportunities would be created during the construction phase of the development and future occupiers would contribute to the local economy, which also weighs significantly in favour of the proposal.
35. I conclude that the adverse impacts of granting planning permission would not significantly and demonstrably outweigh the benefits of the proposed development when assessed against the policies in the Framework as a whole. I have found that paragraph 11 of the Framework applies and in that context the presumption in favour of Sustainable Development is a material consideration which warrants a decision other than in accordance with the development plan.
36. For the above reasons, having considered all other relevant material considerations, I conclude that the appeal should be allowed subject to the conditions below.

M Ollerenshaw

INSPECTOR

SCHEDULE OF CONDITIONS

- 1) Details of the appearance, landscaping, layout, and scale (the 'reserved matters') shall be submitted to and approved in writing by the Local Planning Authority before any development takes place and the development shall be carried out as approved.
- 2) Application(s) for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission, and the development hereby permitted shall take place not later than two years from the date of approval of the last of the reserved matters to be approved.
- 3) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan EMS2818_001 Rev B and Proposed Access Junction Layout ADC1366/001 (other than in respect of reserved matters).
- 4) The development hereby permitted shall be limited to a maximum of 75 dwellings.
- 5) No development shall take place until a Construction Method Statement has been submitted to and approved in writing by the Local Planning Authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - a) the parking of vehicles of site operatives and visitors;
 - b) loading and unloading of plant and materials;
 - c) storage of plant and materials used in constructing the development;
 - d) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - e) wheel washing facilities;
 - f) measures to control the emission of dust and dirt during construction;
 - g) a scheme for recycling/disposing of waste resulting from demolition and construction works;
 - h) measures to control noise levels during construction.
- 6) No development shall take place until the applicant has secured the implementation of a programme of archaeological works in accordance with a written scheme of investigation which has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the written scheme so approved.
- 7) No development shall take place until details of the design, implementation, maintenance and management of a surface water drainage scheme have been

submitted to and approved in writing by the Local Planning Authority. Those details shall include:

- a) detailed design of sustainable drainage system for the entire site based on the Flood Risk Assessment (Report ref: CV8170812/SH/DW/014, Glanville, dated August 2020);
- b) information about means of access for maintenance, the methods employed to delay and control surface water discharged from the site, and the measures taken to prevent flooding and pollution of the receiving groundwater and/or surface waters;
- c) flood water exceedance routes, both on and off site;
- d) a timetable for implementation;
- e) a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by an appropriate public body or statutory undertaker, management and maintenance by a Residents' Management Company or any other arrangements to secure the operation of the surface water drainage scheme throughout its lifetime.

The approved drainage design shall thereafter be implemented in accordance with the approved details prior to first occupation.

- 8) Prior to any above ground works, samples or details of materials to be used in the construction of the external surfaces of the development hereby approved shall be submitted to and approved by the Local Planning Authority in writing. The development shall be undertaken in accordance with the approved samples or details.
- 9) The development shall be carried out in accordance with the recommended mitigation measures and biodiversity enhancements specified in the Extended Phase 1 Habitat Survey (Report ref: P2035 / 0320 – 01, CBE Consulting, dated August 2020).
- 10) The details submitted in accordance with condition 1 above shall include: a plan showing the position of every tree on the site and on land adjacent to the site (including street trees) that could influence or be affected by the development, indicating which trees are to be removed; a schedule in relation to every tree identified listing: information as specified in paragraph 4.4.2.5 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations) (or in an equivalent British Standard if replaced); and, any proposed pruning, felling or other work; in relation to every existing tree identified to be retained, details of: any proposed alterations to existing ground levels, and of the position of any proposed excavation, that might affect the root protection area; and, all appropriate tree protection measures required before and during the course of development (in accordance with paragraph 5.5 of British Standard BS 5837) (or in an equivalent British Standard if replaced); areas of existing landscaping to be protected from construction operations and the method of protection. In this condition "retained tree" means an existing tree which is to be retained in accordance with the approved plans and particulars.

- 11) All changes in ground levels, hard landscaping, planting, seeding or turfing shown on the approved landscaping details shall be carried out during the first planting and seeding season (October-March inclusive) following the commencement of the development or in such other phased arrangement as may be agreed in writing by the Local Planning Authority. Any trees or shrubs which, within a period of 5 years of being planted die, are removed or seriously damaged or seriously diseased shall be replaced in the next planting season with others of similar size and species.
- 12) The pedestrian/cycle link from the application site to Park Road shall be provided before the occupation of the 37th dwelling, in accordance with details that shall have been submitted as part of the reserved matters layout and landscaping details.

END OF SCHEDULE