
Appeal Decision

Site visit made on 8 February 2023

by Bhupinder Thandi BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 March 2023

Appeal Ref: APP/E3715/W/22/3304121

Land adjacent to 25 Barby Lane, Hillmorton, Rugby CV22 5QJ

- 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 Executor of Estate of Robert Bryson & Mrs Karol Bryson against the decision of Rugby Borough Council.
 - The application Ref R21/0713, dated 24 June 2021, was refused by notice dated 9 March 2022.
 - The development proposed is alterations to existing highway access and erection of 5 new dwellings.
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Decision

1. The appeal is allowed and planning permission is granted for alterations to existing highway access and erection of 5 new dwellings at land adjacent to 25 Barby Lane, Hillmorton, Rugby CV22 5QJ in accordance with the application, Ref R21/0713 dated 24 June 2021 subject to the Schedule of conditions at the end of this Decision.

Procedural Matters

2. The application is in outline with access to be considered at this stage. I have determined the appeal on this basis.
3. An illustrative layout accompanies the application and I have paid regard to the layout in so far as assessing the principle of development in land use terms.
4. The appellant has submitted a signed Unilateral Undertaking (UU) securing a biodiversity offsetting scheme.

Main Issue

5. The main issue is the effect of the proposed development upon the character and appearance of the area including the Rainsbrook Valley.

Reasons

6. The appeal site comprises the garden and land associated with 25 Barby Lane – a detached dwelling with associated outbuildings and structures. The site adjoins open fields and pastureland to the south forming part of the Rainsbrook Valley. The site is heavily influenced by the surrounding built form on the edge of Rugby including houses along Barby Lane and in Fellows Way.
7. The Rainsbrook Valley is a plateau fringe landscape on ground that slopes towards the river valley. I have been directed to the Rainsbrook Valley Landscape Sensitivity Assessment which sets out that the area the site lies in

comprises a series of regular small to medium hedged fields on the plateau summit. The assessment states that the area has a high-medium sensitivity to change, but nonetheless, provides scope for some housing development where existing vegetation is retained and enhanced.

8. There would be a degree of urbanisation resulting from the development, however, there is no reason to suggest that an appropriate scale, design and layout could not be secured at reserved matters stage that reflects the surrounding context. The development, whilst increasing the depth of built form on the edge of Rugby would be modest in scale and read against a backdrop of existing development.
9. I acknowledge that the site is largely open, but its appearance limits its contribution to the wider valley landscape. The proposed development would not encroach into the surrounding fields and countryside and would be well contained. I am satisfied that the proposed development would form a logical complement to the scale and pattern of development in this part of the town, successfully integrating into the area and not harming the Rainsbrook Valley landscape.
10. The proposed development would result in visual change and there would be views of it from within the Rainsbrook Valley, but this does not make it unacceptable. It would be viewed against the built up edge of the town and landscaping would screen the development, filtering views of it from the surrounding area. As such, the proposed development would not be unduly prominent or visually intrusive.
11. The Council has made reference to a number of refused applications for new housing development in the Rainsbrook Valley landscape. In respect of two of the examples provided they are clearly of a materially different scale compared to the scheme before me. In respect of the scheme neighbouring the site, it is evident from the information before me, that concerns rested with its position and separation from existing development rather than its effect on the Rainsbrook Valley. Whilst the Council may well have adopted a similar approach to other applications for housing development nearby every appeal is considered on its own merits, as I have done. The examples referred to do not lead me to reach a different conclusion on the main issue.
12. I conclude that the proposed development would not adversely harm the Rainsbrook Valley landscape. As such, it would accord with Policy NE3 of the Rugby Borough Local Plan (2019) which, amongst other things, requires development proposals to consider its landscape context and relate well to local topography and built form.
13. I note the Council have referred to Policy NE2 in the reason for refusal, however, I find that with specific regard to this appeal I have given it negligible weight in coming to my decision.

Other Matters

14. I have considered the representations received in relation to the appeal. There is no substantive evidence that the access is unsuitable or that the proposed development would adversely affect highway safety.
15. I find no substantive evidence before me to suggest that the proposed development would unacceptably affect trees in the area. Furthermore, as

landscaping is a reserved matter there is an expectation that additional trees and planting would be proposed.

16. It is not the purpose of the planning system to protect private views and thus I have given this negligible weight in coming to my decision.

Conditions

17. Conditions relating to the submission of reserved matters and the time limits associated with this have been imposed. I have imposed a condition specifying the relevant drawings as this provide certainty, but only in so far as they relate to matters not reserved for future consideration.
18. In order to achieve a satisfactory appearance of the development conditions relating to the finished floor levels and external lighting have been imposed.
19. In the interests of sustainability conditions requiring details of a sustainable surface water drainage and foul sewage scheme, on-site measures to meet air quality mitigation and broadband connection have been imposed.
20. I note that a Phase 1 Land Contamination Risk Assessment has been carried out which recommends that a Phase 2 Intrusive Site Investigation is undertaken. I have therefore amended the condition suggested by the Council to reflect this. I still consider it necessary to impose a condition for a risk assessment and a remediation scheme to be submitted in the event of unexpected contamination on site.
21. The Council has suggested removing permitted development rights for the enlargement, improvement or other alteration of the dwellinghouse, additions or alterations to the roof, the construction of a porch, a building or enclosure incidental to the enjoyment of the dwellinghouse and hard surfaces incidental to the enjoyment of a dwellinghouse, falling within Classes A, B, C, D, E and F of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).
22. I note that the PPG advises that the blanket removal of freedoms to carry out small scale domestic alterations that would otherwise not require an application for planning permission are unlikely to meet the tests of reasonableness and necessity. However, given the provisions of the GPDO and the area's character I determine that permitted development rights should be removed.
23. I have also deemed it necessary to prevent garages forming part of the development from being converted into living accommodation in the interests of the safe operation of the local highway network.
24. The Council has suggested conditions requiring the submission of external materials, walls, fences, gates, bin and cycle stores, proposed tree planting and for a Landscape and Ecological Management Plan. In my view separate conditions are not necessary as such details form part of the reserved matters. However, I still find it necessary to ensure that the tree protection works are carried out in accordance with the submitted details.
25. Separate conditions for the access and visibility splays to be completed are not necessary as the development should be carried out in accordance with the approved plans.

26. The Council has suggested a condition limiting water usage. This matter is subject to different legislation ie Building Regulations. Furthermore, the informative nature of this condition indicates it is not necessary. As such, it has not been imposed.
27. I note the Council's comments in relation to air source heat pumps. Despite the absence of information from the appellant there is no substantive evidence before me to indicate that such units are excessively loud when in operation resulting in a noise nuisance, particularly as they are intended to be used within residential settings. As such, a condition is not necessary.
28. The Council has suggested a condition for a construction management plan. However, taking into account that the modest scale of the development is unlikely to result in significant levels of construction traffic, disturbance to nearby occupiers and that the site has no important ecological characteristics this condition has not been imposed.

Conclusion

29. For the reasons set out above the appeal succeeds.

B Thandi

INSPECTOR

Schedule of conditions

- 1) Details of the 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 takes place and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 3) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Highway and Access Drive Layout Drawing Number 12220-HBA-DR-A-007 Rev C; Site Location Plan Drawing Number 12220-HBA-DR-A-018 Rev A and Proposed Site Layout Drawing Number 12220-HBA-DR-A-020 Rev A but only in respect of those matters not reserved for later approval.
- 5) No development shall take place until details of the means of sustainable surface water drainage and foul sewage has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details.
- 6) No development shall take place until the Phase 2 Intrusive Ground Investigation has been undertaken and its findings submitted to and approved in writing by the local planning authority. Where land affected by contamination is found, which poses risks identified as unacceptable in the risk assessment, a detailed remediation scheme shall be submitted to and approved in writing by the local planning authority. The scheme shall include an appraisal of remediation options, identification of the preferred option(s), the proposed remediation objectives and remediation criteria, and a description and programme of the works to be undertaken including the verification plan. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use. The approved remediation scheme shall be carried out and upon completion a verification report by a suitably qualified contaminated land practitioner shall be submitted to and approved in writing by the local planning authority before the development is occupied.
- 7) Any contamination that is found during the course of construction of the approved development that was not previously identified shall be reported immediately to the local planning authority. Development on the part of the site affected shall be suspended and a risk assessment carried out and submitted to and approved in writing by the local planning authority. Where unacceptable risks are found remediation and verification schemes shall be submitted to and approved in writing by the local planning authority. These approved schemes shall be carried out before the development is resumed or continued.
- 8) No development shall take place, above ground level, until full details, of the ground floors of the proposed buildings, the highway and parking areas in

relation to existing ground levels have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.

- 9) No development shall take place, above ground, until details of an external lighting scheme has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details prior to occupation of the building.
- 10) No development shall take place, above ground, until details of a scheme detailing on-site measures within the development to meet air quality mitigation requirements has been submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details prior to occupation of the buildings.
- 11) Prior to the first occupation of each dwelling broadband infrastructure shall be provided.
- 12) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (or any order revoking and re-enacting that Order with or without modification), no enlargement, improvement or other alteration of a dwellinghouse, additions or alterations to the roof, the construction of a porch, a building or enclosure incidental to the enjoyment of the dwellinghouse and hard surfaces incidental to the enjoyment of a dwellinghouse, falling within Classes A, B, C, D, E and F of Schedule 2, Part 1 shall be carried out.
- 13) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), or any order revoking or re-enacting that order, the proposed detached garages shall not be converted to living accommodation.
- 14) The development hereby permitted shall be carried out in accordance with the recommendations set out in the Tree Report Survey dated June 2021.
- 15) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the occupation of the buildings or the completion of the development, whichever is the sooner; and any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.