



Appeal Decision

Site visit made on 16 May 2023

by S Dean MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 May 2023

Appeal Ref: APP/X2410/W/22/3306301

Land to the rear of 163 Mountsorrel Lane, Rothley, Leicestershire LE7 7PU

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission
 - The appeal is made by Vernon Properties Leicester Limited against Charnwood Borough Council.
 - The application Ref P/22/0984/2 is dated 16 May 2022.
 - The development proposed is residential development of up to 5 no. dwellings, with private access drive (following demolition and removal of all existing buildings within the site).
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application was made in outline with approval sought for access. Layout, appearance, landscaping and scale would be the subject of future applications for approval of reserved matters. Plans were submitted showing the access and an indicative layout of the site. Given this and the comments of the appellant, these indicative plans have been treated as such.
3. As noted above, this appeal is against a failure to give notice of a decision within the prescribed period. Subsequent to the submission of the appeal, the Council has issued a statement setting out the reasons for which they would have refused the planning application had they determined it.

Main Issues

4. The main issues are therefore whether or not;
 - the site is a suitable location for the development proposed,
 - safe and suitable access could be provided,
 - the proposal would result in biodiversity net gain,
 - the proposal would compromise trees worthy of retention,
 - the proposal would harm the living conditions of the occupiers of 163 Mountsorrel Lane (No 163) with specific regard to noise and disturbance, and,
 - the proposal would harm the steady and adequate supply of minerals.

Reasons

Location

5. Parties agree that the appeal site lies within land designated as open countryside and an Area of Separation (AoS), outside, but close to the defined development limit of Rothley, and close to Mountsorrel, both of which are designated service centres.
6. Adopted policies in the Charnwood Local Plan 2011 to 2028 Core Strategy, adopted 9 November 2015 (the Core Strategy), saved policies in the Borough of Charnwood Local Plan, adopted January 2004 (the Local Plan), and made policies in the Rothley Parish Neighbourhood Plan 2020-2028, made January 2021 (the NP) seek to control the locations of growth in the area. Alongside the overarching development strategy which envisages development in service centres, Development Limits and AoS are two of the policy mechanisms used to do this.
7. Policy CS1 of the Core Strategy allows for development of housing on land adjoining service centres, and the appellant seeks support for their proposal from this.
8. However, the submitted site location plan shows that the red line site area is buffered from the rear gardens of the houses fronting onto Mountsorrel Lane by an area of land in a blue line. The Policies Map provided by the Council, an excerpt of which was also provided by the appellant in their final comments, show that the limits to development and the AoS are drawn tightly to the rear of those houses on Mountsorrel Lane. As a result, whilst the appellant, with their comments and annotated excerpt seek to suggest that the appeal site *"immediately adjoins the limits to development for Rothley"* and benefits, as a result, from support in Policy CS1, to my mind, the blue-line buffer on the site location plan plainly shows otherwise. Whilst I acknowledge their reasons for limiting the size of the red-line area, they do not change my conclusion.
9. Turning specifically to the test in saved Policy CT/4 around development in the AoS, I note firstly that this test is only to be applied to development acceptable in-principle. It has been established above that the proposal is not acceptable in-principle. Nevertheless, the appellant has addressed this test in their case. I accept that there are buildings on the site, of varying scale and appearance, but given their current condition, character and appearance, to my mind the site appears predominantly open, with little to no enclosure of areas within it. This would inevitably change with development of the site. I note the appellant has compared the footprint of the buildings on site to their proposal, but given the outline status of the application, give this comparison very little weight.
10. I turn now to the second part of the test, requiring that the narrow gap between settlements is not reduced by development in the AoS. In my opinion, the buffer between the red-line area, where the built form of the proposal would be located, would, irrespective of the ultimate layout, appearance and scale reduce this gap. The site itself would take on a more formalised appearance, eroding the established open character of the site, and this would be emphasised by the gap to the existing houses on Mountsorrel Lane. Following my visit to the site and its surroundings, it seems to me that recent housebuilding in the area, combined with the more established urban form has increased both the importance of the AoS and its sensitivity to development.

11. Taking all of that together, I find that regardless of the outline nature of the proposal, it would not pass the test in saved Policy CT/4 of the Local Plan. For the same reasons, I consider that the proposal would not support and protect the character of the landscape and countryside, contrary to the requirements of Policy CS11 of the Core Strategy.
12. The NP allows for development within the Rothley Limits to Development, and seeks to protect, maintain and enhance the AoS. My reasoning above establishes that the proposal would conflict with the NP in that regard.
13. As a result, the appeal site, whilst being sustainably located close to two service centres, is not a suitable location for the development proposed. The proposal does therefore conflict with Policies CS1 and CS11 of the Core Strategy and saved Policies ST/2, CT/1, CT/2 and CT4 of the Local Plan. The proposal would also conflict with Policies R01 and R05 of the NP. These all seek, amongst other things, to ensure that housing development is delivered in line with the development strategy, that open countryside is protected, and that AoS are protected.

Access

14. The appellant accepts, and indeed, highlights, many of the shortcomings of the proposed access highlighted by the Council and the Local Highway Authority (LHA). Whilst they suggest that these are all surmountable or would be of such minor and limited consequence given the scale of the proposal and the likely level of use of the access, I disagree.
15. It is plain from the evidence before me, and indeed, my observations during my site visit, that Mountsorrel Lane is well used, and much of the vehicle traffic on it travels in excess of the speed limit. In addition, the footways are well used and there are bus stops, a bench and an apparently frequently-visited cemetery close by. All of these, in combination with my own experience stopping on Mountsorrel Lane, turning into, and reversing out of the access lead me to consider that it would not be appropriate to set aside local standards and requirements because of the proposed level of use.
16. The appellant has responded to detailed criticism around pedestrian visibility splays by highlighting the grass verge and bench, which may discourage pedestrians from walking close to the back edge of the footway. Whilst this may be the case, there can and should be no reasonable expectation that pedestrians do not use the whole footway, or that they should be expected to use it in a certain way to make otherwise unacceptable access proposals acceptable. I would also note that the vehicle speeds make walking close to the carriageway edge somewhat less attractive than it might otherwise be.
17. I note that the proposal would replace an existing lawful agricultural use of the land, and that this could have traffic movements and uses associated with it. However, there is no evidence of the scale or nature of existing movements with which to draw comparisons. In any event, to my mind, the cited policies and guidance do not make the replacement of what may be an existing unsatisfactory access arrangement with another simply because it may be less unsafe, appropriate. Similarly, whilst I note there are a significant number of other accesses along Mountsorrel Lane, some of which may be tight, some of which may have difficult visibility, they do not alter my conclusions on this proposal or its particular effects.

18. As a result, I find that safe and suitable access could not be provided for the proposal, contrary to Policies CS2, CS17 and CS18 of the Core Strategy and saved Policy TR/18 of the Local Plan. These seek, amongst other things to ensure that safe access is provided to proposed development and that proposals support sustainable modes of travel.
19. The proposal would also conflict with guidance in the Framework on promoting sustainable transport, notably by having an unacceptable impact on highway safety, by failing to give priority to pedestrians and failing to minimise the scope for conflicts between them and motor vehicles.

Biodiversity

20. Adopted Policy CS13 in the Core Strategy seeks to conserve and enhance the natural environment for its own value, by supporting development which protects biodiversity. Impacts on biodiversity require to be mitigated or compensated for and likely to result in biodiversity net gain. To measure this, proposals are to be accompanied by suitable survey and assessment work.
21. Whilst the submission does include an Ecological Appraisal incorporating a Biodiversity Impact Assessment (BIA), the scope of the assessment is inconsistent with the requirements of the Charnwood Borough Council Biodiversity Planning Guidance, May 2022 (the BPG). Most notably, the submission surveys, and then makes recommendations for enhancements on, land outside the site boundary. The Council also has concerns over the ecological and biodiversity baseline for the site.
22. Whilst I accept that legislative requirements for biodiversity net gain have not yet been enacted, there is existing, adopted development plan policy support for it. Given the concerns of the Council over the adequacy of the submitted information and the identification of a number of habitat features and protected species that would need to be protected in any future reserved matters application, I am concerned that it would not be appropriate to leave certainty over issues such as the on-site biodiversity baseline and necessary mitigation to condition. I do not consider that such an approach would give me the certainty I require to be sure that the requirements of Policy CS13 of the Core Strategy, amplified by the BPG would be met.
23. As a result, I find that on the basis of the evidence before me, I cannot be certain that the proposal would result in biodiversity net gain. It would therefore conflict with Policy CS13 of the Core Strategy, guidance in the BPG and the aims of the Framework.

Trees

24. The Council has expressed concerns over the effect of likely necessary access improvements on the large, attractive and prominent oak tree adjacent to the site access. Given that the tree appears to be outside the site-boundary, has survived in its location for some time, and accepting that no details of likely works have been provided, it does not seem entirely unlikely that its protection and ultimately, preservation, could be dealt with through the imposition of a suitably worded condition. I note the appellant accepts this position, and that they would also retain the willow within the site.

25. As a result, I find that subject to suitable conditions and detailed design, the proposal would not compromise trees worthy of retention, consistent with the requirements of Policies CS2 and CS11 of the Core Strategy.

Living conditions

26. The proposal would change the nature of the use of the site access, from an unquantified amount of use associated with the existing lawful use to the level of use associated with five dwellings. Whilst I have no doubt that this change would be noticed by the residents of No 163, the existing boundary screening, the gap between the house itself and the access, and the existing conditions on Mountsorrel Lane itself to the front, in my opinion all count against the proposal giving rise to unacceptable or otherwise harmful levels of noise and disturbance.
27. As such, I find that the proposal would not harm the living conditions of the occupiers of No 163 with specific regard to noise and disturbance and would therefore not conflict with the aim of Policy CS2 in the Core Strategy to protect amenity.

Minerals

28. Policy M11 of the Leicestershire Minerals and Waste Local Plan, up to 2031, adopted 2019 (the MWLP), seeks to protect mineral resources in the area from permanent sterilisation by other development, but for a limited number of exceptions. The appeal proposal is not for one of the exceptions set out in the Policy, nor has any information been submitted to meet the other requirements of the policy. In particular, whilst I note the importance of, and need for housing in the area, I do not have sufficient information before me in this appeal to be certain that the need for five dwellings is sufficient to override the need to safeguard minerals in the area. The lack of an objection from the Minerals Planning Authority does not, in itself indicate that the proposal is acceptable in this regard.
29. As such, it has not been demonstrated that the proposal would not harm the steady and adequate supply of minerals, and it is therefore contrary to Policy M11 of the MWLP and guidance in the Framework.

Planning balance

30. Both the Council and the appellant agree that there is not currently a five-year supply of housing-land as required by national policy in the area. In addition, the Core Strategy was adopted in 2015 and the Local Plan in 2004. As a result, in Framework terms, the Local Plan is deemed out-of-date. The tests at paragraph 11d of the Framework therefore apply.
31. In relation to paragraph 11di, there are no clear reasons for refusal in relation to the areas or assets of particular importance referred to by the Framework. The test at paragraph 11dii of the Framework is therefore engaged, such that planning permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole.
32. The proposal would deliver up to five houses in an area of need, and in the face of the Framework imperative to significantly boost the supply of homes, this is a substantial benefit.

33. I agree that in terms of access to services and the potential to carry out day-to-day tasks without necessarily relying on the private car, being close to two service centres, the site is sustainably located. I have also found that the proposal would not compromise trees worthy of protection, and that it would not cause harm to living conditions. These factors are neutral in the planning balance.
34. However, I have found, in my reasoning above that the location of the site, including its effect on the character and appearance of the area, its access, likely biodiversity effects and potential effect on minerals supply would all lead to conflict with the development plan. Despite the common ground between the Council and the applicant around the weight to be given to development plan policies in the face of the Framework, I find that these adverse impacts would also conflict with policies in the Framework.
35. The location of the site, in a protected, open space necessary to preserve the separation between two settlements conflicts with the overall aim of the Framework to deliver sustainable development, including guidance around delivering a sufficient supply of homes in suitable locations.
36. I have found that the proposal would have an unacceptable impact on highway safety. Furthermore, it would not appear to give priority to pedestrian movements or create places which minimise the scope for conflict between pedestrians and vehicles. This is clear conflict with the Framework.
37. The Framework requires development to contribute to and enhance the natural environment, and secure measurable biodiversity net gains. In light of my conclusions above, I cannot be sure that the proposal would do this.
38. I have found above that there is insufficient information before me to know if the appeal proposal represents the overriding need required by development plan policy to set aside local mineral safeguarding. Even acknowledging the Framework imperative to significantly boost the supply of homes, on the basis of the information before me it would, to my mind, be impossible to properly set aside this safeguarding in the face of guidance in the Framework that it is essential that there is a sufficient supply of minerals and that these can only be worked where they are found.
39. I find that these are all significant adverse impacts which the Framework as a whole, seeks to guard against. As a result, I consider that they significantly and demonstrably outweigh the benefits which may flow from up to five houses, even accepting that in the face of the scale of the shortfall in this area, any contribution would be beneficial.
40. As such, the proposal does not benefit from the presumption in favour of sustainable development set out in the Framework.
41. Given the emerging policies set out by the Council and considered by the appellant do not significantly change the approach in the adopted and saved policies of the development plan, as well as the Framework, I find that they are of limited weight in determining this appeal.

Conditions

42. I note the appellant has provided comments on the conditions suggested by the Council should the application be permitted. Having reviewed these conditions I do not consider that their imposition would overcome or otherwise outweigh the harm I have found in my reasoning above.

Conclusion

43. For the reasons set out above, the proposal would significantly conflict with the development plan. Furthermore, I have found that the proposal would conflict with Government guidance in the Framework.
44. Whilst there are material considerations which weigh in favour of the proposal, they do not outweigh the significant development plan conflict I have found, such that a decision should be taken other than in accordance with it.
45. The appeal should therefore be dismissed.

S Dean

INSPECTOR