



Appeal Decision

Site visit made on 16 May 2023

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 June 2023

Appeal Ref: APP/Y2430/W/22/3310719

**Land East of Sandy Lane, Scalford, Melton Mowbray, Leicestershire
LE14 4DS**

- 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 Mr Tim Lee against the decision of Melton Borough Council.
 - The application Ref 21/01332/FUL, dated 23 November 2021, was refused by notice dated 2 September 2022.
 - The development proposed is described as "full planning application for the erection of 3 no. dwellings, with associated private access driveway".
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Decision

1. The appeal is dismissed.

Main Issues

2. The main issues are:
 - (i) whether the appeal site is in a suitable location for housing development, with particular reference to the policies contained within the Scalford Parish Neighbourhood Plan 2019-2036 Referendum Version, adopted 2021 (NP); andthe effect of the proposed development on:
 - (ii) the character and appearance of the surrounding area, including Scalford Conservation Area;
 - (iii) highway safety;
 - (iv) the living conditions of the occupiers of neighbouring properties; and
 - (v) the housing mix of the surrounding area.

Reasons

Suitable Location

3. The NP was adopted after the adoption of the LP and paragraph 6.12 of the Independent Examiner's Report for the Scalford Parish Neighbourhood Development Plan 2019-2036, May 2020¹ (IER) states "I am satisfied that subject to the incorporation of the modifications recommended in this report that the submitted Plan is in general conformity with the strategic policies in

¹ Scalford Parish Neighbourhood Development Plan 2019-2036, A report to Melton Borough Council on the Scalford Parish Neighbourhood Development Plan by Andrew Ashcroft, Independent Examiner, dated 19 May 2020

the development plan” and, with particular reference to NP Policy H2, the IER states at paragraph 7.20 “I am satisfied that the definition of limits to development in the submitted Plan is in general conformity with the strategic policies in the Local Plan. In particular they have been defined to facilitate sustainable development”.

4. Furthermore, I note that in respect of NP Policy H4, the IER references that Melton Borough Council “contends that the policy approach conflicts with the provisions of LP² Policy SS3 insofar as Wycomb and Chadwell are concerned” but no such conflict was raised regarding Scalford. Consequently, the evidence before me indicates that there is no conflict between the NP policies and the LP policies.
5. The appeal site falls outside of the limits to development as identified at Figure 3 of Policy H2 of the NP and accordingly it is treated as open countryside, where development will be carefully controlled in line with local and national strategic planning policies. This is reinforced by NP Policy H4 relating to windfall sites which states that small scale infill and redevelopment sites will be supported where it is within the limits of development for Scalford.
6. There are no policies within the LP that would support the proposal within the open countryside. Paragraph 79 of the National Planning Policy Framework (‘the Framework’) states that to promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. However, as detailed above, the IER concludes that the limits to development in Scalford would facilitate sustainable development. Paragraph 80 of the Framework supports the provision of isolated homes in the countryside against a closed list of exceptions. However, the appeal site would adjoin Scalford and therefore would not be considered isolated in respect of paragraph 80. Consequently, the proposal would not comply with local and national strategic planning policies in respect of housing.
7. In reference to the first main issue, the proposal would not be in a suitable location for housing development, with particular reference to the policies contained within the NP. As such, the proposal would conflict with Policies H2 and H4 of the NP which, amongst other things, seek to carefully control development outside the defined limits to development in line with local and national strategic policies, and to support small scale infill and redevelopment sites where it is within the limits of development for Scalford.

Character and Appearance, including Scalford Conservation Area

8. The dwellings along the eastern side of Sandy Lane front onto the road, are sited at varying distances from the road and have a mixed character and appearance. The dwellings and their gardens project a similar distance to the rear, creating a ribbon of development. These dwellings form the edge of Scalford with open fields and allotments sited to the rear set within an undulating valley around a water course.
9. It is proposed to erect three two-storey dwellings on part of a field immediately behind some of the dwellings that front onto Sandy Lane. The proposed dwellings would be accessed via an existing grassed track between 12 and 14

² Melton Borough Local Plan 2011-2036, adopted 2018

- Sandy Lane and would be set behind a large area of hardstanding that would be used for the parking and turning of vehicles and to access each plot.
10. The proposal would significantly extend beyond the existing ribbon of development into an area that is currently devoid of buildings and structures. It would create backland development, which would conflict with the established linear character of the residential development along this side of Sandy Lane. It would also extend the built development beyond the limits to development of Scalford into the countryside and towards the river valley which contributes positively to the setting of Scalford, resulting in an urbanising effect that would erode the rural character of the area and the rural setting of the settlement.
 11. The siting of the dwellings beyond the ribbon of development would be particularly prominent and conspicuous when travelling along Wycomb Lane and from a Public Right of Way to the southeast. Furthermore, I was able to determine from my site visit that the northern part of the dwelling on plot 2 would be visible through the existing access when viewed from Sandy Lane. Although the proposed dwellings would, in some views, be observed against the backdrop of the existing dwellings fronting Sandy Lane, their projection beyond these dwellings would also be apparent, which would be visually intrusive and would not respond to the established pattern of development or character of the surrounding area.
 12. I have been directed to a building that has been constructed behind the dwellings that front along this side of Sandy Lane as an example of existing backland development in the surrounding area. However, this is a single storey agricultural building and is therefore not directly comparable to the appeal proposal. Furthermore, the proposed dwellings would extend further into the countryside than this building. I have also been directed to evidence of former buildings within the appeal site. However, these were agricultural buildings and have been demolished.
 13. For the reasons given above, the proposal would detract from the character and appearance of the surrounding area. Accordingly, it would conflict with Policies EN1, EN6 and D1 of the LP and Policies H4 and H6 of the NP which, amongst other things, seek to ensure that the siting and layout of developments must be sympathetic to the character of the area, ensure new development is sensitive to its landscape setting and does not harm open areas which contribute positively to the individual character of a settlement.
 14. The existing access is located within Scalford Conservation Area (CA) and the field in which the proposed dwellings would be sited adjoins the boundary of the CA and therefore is within its setting. I therefore have a statutory duty under Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to pay special attention to the desirability of preserving or enhancing the character or appearance of that area.
 15. The CA encompasses almost the whole of the built-up area of Scalford village and is surrounded on all sides by countryside. It is characterised by a traditional rural street pattern, with properties fronting the street and their outbuildings set back within the plot. The significance of the CA derives from its architectural and historic interest originating from the surviving historic settlement pattern and the historic core of the village, including 18th and 19th century buildings.

16. The construction of three dwellings with their associated internal access road, domestic outbuildings and other paraphernalia, the re-surfacing of the access road from grass to hardstanding, and the incursion of built development within views into and out of the CA, would considerably erode the rural setting of this part of the CA and would fundamentally change the contribution the appeal site provides to the setting and significance of the CA.
17. Consequently, the proposal would also harm the CA and the setting of the CA. In accordance with paragraph 199 of the Framework, I attach great weight to the desirability of preserving the CA and its setting, a designated heritage asset. Given the scale and nature of the proposed development, the harm to the significance of the CA and its setting would be 'less than substantial'. The less than substantial harm that I have identified to the significance of the setting of the CA should be weighed against the public benefits of the proposal.
18. The proposal would provide three dwellings which would help to meet the Government's objective of significantly boosting the supply of housing. The proposal would also provide a limited amount of short-term employment through the construction phase of the development. I attach moderate weight to these matters. I accept the provision of three dwellings would provide some support for the vitality of the rural community, however, the IER concluded that this would be achieved by development within the limits to development and therefore I attached limited weight to this matter.
19. The harm I have found in respect of the proposal on the significance of the CA and its setting, for which I must attach great weight, would not be outweighed by the modest public benefits identified.
20. The proposal would therefore conflict with LP Policy EN13 which, amongst other things, seeks to ensure the protection and enhancement of heritage assets when considering proposals for development affecting their significance and setting. Furthermore, the proposal does not comply with the requirements of the Framework in terms of conserving heritage assets in a manner appropriate to their significance.

Highway Safety

21. Sandy Lane is a single width no-through road with a 30mph speed limit that widens for a short distance in front of 14-18 Sandy Lane. The road is predominantly residential, but also provides access to the village hall, a playing field and allotments towards the northern end. A pavement is located along the eastern side of the road that varies in width.
22. The appeal site's access is located between 12 and 14 Sandy Lane. It is grassed with two tyre tracks that leads to the field beyond. The access is single width where it meets Sandy Lane, with a pinch-point between the side elevations of No's 12 and 14 and then widens where it meets the gate into the field. No 12's boundary treatment adjacent to the access where it adjoins Sandy Lane consists of a close boarded fence and vegetation which, together with a telegraph pole, restrict visibility from the access in a southerly direction. A pavement with a dropped kerb extends across the front of the access.
23. There is no dispute between the main parties that the access onto Sandy Lane does not accord with the Leicestershire County Council Highway Design Guide (HDG). However, the appellant considers that the small number of dwellings

- proposed, the low number of vehicles and pedestrians using Sandy Lane and the low speed of vehicles using Sandy Lane should be taken into consideration in this instance to justify a reduction in the HDG's requirements.
24. The Edwards & Edwards Consultancy Ltd Accompanying Highways Report, finalised October 2021 estimates that the 85th percentile speed of vehicles passing the access will be very low and likely around 15mph. While the width of Sandy Lane may aid a reduction in vehicle speeds, this assertion has not been substantiated with evidence. Even if evidence was supplied to confirm vehicle speeds of 11-15mph, the access could not achieve the required visibility splays and therefore would be substandard in this regard. Furthermore, evidence has not been provided to demonstrate that the vertical visibility splay would not conflict with the boundary treatment at No 12, which falls outside the appellant's ownership.
 25. The existing access is substandard in respect of pedestrian visibility splays and the Local Highways Authority has stated that the splays could not be improved to meet the minimum requirements detailed within the HDG. Contrary to the appellant's assertion that a low number of pedestrians use Sandy Lane, at the time of my site visit, I noted a large number of children walking along the pavement, across the site access, towards the village hall. Furthermore, the evidence before me suggests that this occurs regularly during term time.
 26. The width of the access does not comply with the HDG. Therefore, it is substandard in this regard and could lead to conflict between vehicles entering and leaving the site, resulting in vehicles waiting on the highway or having to reverse onto the highway. I note the existing and previous use of the field for agricultural purposes and that vehicles would have utilised the access in association with this use, as well as utility company vehicles. However, no comparative trip generation assessment has been provided to assess whether the proposal would result in a reduction in vehicular movements. Furthermore, I note that third parties have disputed the limited information that has been provided in this regard.
 27. The width of the access would be substandard to facilitate emergency service vehicles and a swept path analysis for a fire tender indicates that it could not use the access without conflicting with the boundary treatments and dwellings on either side. The appellant asserts that a sprinkler system could be installed within each dwelling, or a fire hydrant could be provided within the appeal site that would negate the need for a fire tender to use the access. However, this would be contrary to the requirements of the HDG and from the evidence before me, it is unclear whether this would be acceptable to the fire brigade.
 28. I have been directed to an alternative access into the appeal site within the northern boundary that the appellant states could be used as an emergency access. However, the access would require vehicles to travel over land which is owned by the Parish Council. The Parish Council has stated that the access has been created without their permission and there is not a right of access over their land. Furthermore, the route between the gate and Sandy Lane is not included within the appeal site and therefore could not be conditioned to be used for such a purpose.
 29. The appellant asserts that the proposal would remove agricultural vehicular movements from the access, however, the information before me does not

indicate how the remainder of the field outside of appeal site would be accessed without utilising the existing access.

30. I acknowledge that some existing roads in and around the village may have a width narrower than the proposed access and may have substandard visibility splays. However, the village comprises many historic roads and accesses (as evidenced by the Conservation Area Appraisal) and they are not a substantive reason to allow the proposal with a substandard access. I also note that some existing driveways require vehicles to reverse onto the highway. However, these driveways tend to serve one dwelling and therefore are not directly comparable. I have been directed to a development along Sandy Lane that is said to have substandard visibility splays. However, limited information has been provided regarding this development for a comparison to be undertaken and in any event, I must determine the appeal on its own merits.
31. I acknowledge that there have been no previously recorded personal injury accidents in the immediate vicinity of the appeal site in the last five years and that the access is existing. However, the absence of accidents does not indicate that an access is safe in highway safety terms, or that an accident could not occur in the future.
32. The access would be substandard in terms of width, vehicle visibility and pedestrian visibility and the characteristics of the surrounding area does not indicate that the access could operate safely without complying with the requirements of the HSG. Consequently, in reference to the third main issue, the proposed development would have an unacceptable impact on highway safety. It would conflict with Policies IN2 and D1 of the LP and Policy TR1 of the NP which, amongst other things, seek to ensure that proposals include an appropriate, safe connection to the existing highway network, do not unacceptably impact on the safety and movement of traffic on the highway network, and provide any necessary improvements to site access.
33. The proposal would also be contrary to paragraphs 110 and 111 of the Framework that, amongst other things, seek to ensure that a safe and suitable access to the site can be achieved by all users and that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety.

Living Conditions of Occupiers of Neighbouring Properties

34. The access that would serve the proposed dwellings is sited between 12 and 14 Sandy Lane and comprises a grassed track. Both dwellings have pedestrian access onto the track from their rear gardens, while No 12 also has vehicle access to their rear garden. Some of No 12's ground and first floor windows are positioned in close proximity to the access, appear to serve rooms that would be frequently used, and can be clearly seen above the height of the existing boundary treatment. The windows within No 14 that are closest to the access do not appear to serve rooms that would be frequently used, with some being obscure glazed. However, the boundary treatment's low height allows direct views into this property's rear garden and rear windows. Furthermore, the rear gardens of both No 12 and 14 are not of a significant size.
35. The appellant asserts that the proposed development would result in fewer vehicle movements than the existing use of the appeal site for agricultural purposes and by utilities companies. However, limited information has been

provided to substantiate this assertion and it is disputed by third parties. Furthermore, the appellant states that the land is currently used as managed grassland which is likely to result in significantly fewer vehicle movements than three dwellings served by 16 vehicle spaces. Also, the limited appearance of vehicle tracks at the time of my site visit suggests that vehicle movements are currently likely to be low and infrequent.

36. The proximity of the access to some of No 12 and 14's windows and their private rear gardens, the limited size of these property's rear gardens, the low height of the existing boundary treatments, together with an increase in vehicle movements from the proposed development, would cause significant disturbance to the living conditions of the occupiers of these properties from the noise of vehicles travelling along the access and those waiting to pass.
37. In respect of the fourth main issue, the proposed development would unacceptably harm the living conditions of the occupiers of 12 and 14 Sandy Lane, with particular reference to noise and disturbance. It would conflict with Policy D1 of the LP and Policy H6 of the NP which, amongst other things, seek to ensure that the amenity of neighbours and neighbouring properties are not compromised and that development should not have an unacceptable impact on general amenity or noise levels in the immediate vicinity.

Housing Mix

38. The proposal would consist of three, 4/5 bedroom dwellings. Policy H3 of the NP states that on sites of between 1-4 dwellings, new market housing should have 3 or fewer bedrooms as there is a need for smaller homes within the area. While the proposal is for three dwellings, they are to be Self and Custom Build (SCB), not market housing. Consequently, in respect of the fifth main issue, the proposal would not conflict with NP Policy H3.

Other Matters

39. Although not within the description of development, the planning application form states that the proposal would comprise three self-build dwellings. The appellant has highlighted the Council's responsibility under the Self Build and Custom Housebuilding Act 2015 ('the Act') to provide enough suitable permissions to meet identified demand for the Borough of Melton and has directed me towards published comments made by Central Government and the Right to Build Taskforce in reference to making it easier for people to build their own homes³. The appellant has also directed me to the Council's Annual Monitoring Report, published 2022 and concluded that there is a shortfall of SCB plots to meet those on the Council's register.
40. The information before me suggests that one of the houses would be occupied by the appellant and the other two houses would be occupied by members of the appellant's family. However, I have not been provided with a mechanism to ensure compliance with the provisions of the Act to provide certainty that the dwellings would be self-build projects. Furthermore, it is unclear whether those that would occupy the proposed dwellings are on the Council's register. Even if the proposed dwellings were occupied as SBDs, the contribution to the overall

³ Comments provided by the former Housing Secretary Rt Hon Robert Jenrick MP, Andrew Baddeley-Chappell, CEO of the National Custom & Self Build Association and Richard Bacon MP, Ambassador for the Right to Build Taskforce

demand for such housing would be modest, due to the number of units proposed.

41. I have been directed to an appeal decision for five SBDs⁴ that was allowed. However, the appeal site is in a different Council administrative area; the proposal was for five SCB plots for which outline permission with all matters reserved except access was proposed; and a signed unilateral undertaking was submitted to support the appeal. The proposal is therefore not directly comparable to the appeal approval and in any event, I must determine the appeal on its own merits.
42. The proposed occupiers of the three SCB dwellings are said to live within Salford in smaller sized dwellings which would become available to others should permission be allowed for the three dwellings. However, limited evidence has been provided to substantiate these matters, and the size and price of existing dwellings occupied by the appellant and his family members is disputed by third parties. Furthermore, there is no guarantee that these existing dwellings would be placed on the open market.
43. The Council consider 12 Sandy Lane is of some historic significance as it is shown on the 1884 map of the area. The Planning Practice Guidance states that it is important that the decisions to identify buildings as non-designated heritage assets (NDHAs) are based on sound evidence. However, the evidence before me is extremely limited regarding the identification of No 12 as a NDHA. Although obviously of some age, from the evidence before me, I do not agree with the Council that the building is of sufficient architectural or historic significance to be considered a NDHA. On this basis, paragraph 203 of the Framework is not engaged and therefore I am not required to undertake a balanced judgement regarding the proposal's indirect effect on this building.
44. The appellant received positive pre-application advice in respect of the proposed development's compliance with LP Policy SS2 as it would be adjacent to a 'service centre'. However, the pre-application advice pre-dates the adoption of the NP and I must determine the appeal against the most up-to-date development plan. Furthermore, pre-application advice is given without prejudice and cannot pre-determine the outcome of a subsequent application, which must take account of all relevant matters.

Conclusion

45. For the reasons outlined above, having had regard to the development plan as a whole and all other matters raised, the appeal should be dismissed.

A Berry

INSPECTOR

⁴ Appeal Ref: APP/V3120/W/22/3297610