



Appeal Decision

Site visit made on 3 November 2023

by D Szymanski BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10 November 2023

Appeal Ref: APP/T2405/W/22/3308521

Land adjacent to 6 Strawberry Gardens, Enderby LE19 4PQ

- 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 Dean Rainbow of Peastone Properties Limited against the decision of Blaby District Council.
 - The application Ref 21/1021/FUL, dated 11 August 2021, was refused by notice dated 29 September 2022.
 - The development proposed is Erection of detached dwelling with associated vehicular access, parking and landscaping.
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Decision

1. The appeal is dismissed.

Procedural Matters

2. In the banner heading above I have shortened the description to omit reference to the appeal site location and incorporated it within the site address.
3. Since the appeal was lodged, at the appeal site the Council has permitted (Ref. 22/1210/FUL) the erection of a dwelling with associated access, parking and landscaping. I have taken this into consideration in determining this appeal.
4. On 5 September 2023 the revised National Planning Policy Framework (2023) (the Framework) was published. As the only substantive revisions relate to policy for onshore wind development, in-light of the issues for consideration in this appeal, I have not sought the Council's or appellant's comments upon it.

Main Issues

5. The main issues are:
 - the effect of the proposed development upon the character and appearance of the area; and,
 - whether or not the proposed development would be consistent with policies concerned with the protection of biodiversity and Green Infrastructure (GI).

Reasons

Character and appearance

6. The appeal site includes various trees, forest floor, hedgerows, grassland and part of a former railway cutting around the junction of Seine Lane and

Strawberry Gardens. Northwest of the appeal site along Strawberry Gardens are a small number of detached dwellings. The site is surrounded north and south by the linear wooded railway cutting, corridor of Seine Lane, fields, and what appeared to be a grassed garden or paddock area opposite the site.

7. The wider surrounds include a nursery and garden centre complex, industrial and commercial land beyond a field and wooded area to the north, and a residential area of the settlement of Enderby to the south and east at which a new dwelling is permitted at Capers Close¹. Despite the mixed character of the wider area, the extensive tree cover, boundary hedgerows, demarcation by the railway cutting, fields and limited dwellings, means the immediate site surrounds retain a largely rural character and appearance.
8. The Inspector's view at land adjoining No 2² were in the context of it being garden land, adjoined by dwellings and garden land on three sides, and much closer to the garden centre complex, in judging that site to appear part of a transition point, and part of the village in a semi-rural manner. This appeal site is viewed in the context of wooded surrounds and grassland on three sides, and a small number of dwellings, so it appears rural and, in the countryside, with little appreciation of the garden centre complex. So, I simply cannot make the same findings, as the other Inspector, for this appeal site.
9. The appellant's arboricultural survey³ (AS) confirms that T3 is infected with Chalara Ash Dieback (CAD). From what I saw it will probably soon need to be removed. From what I saw and noting the findings of the AS and Biodiversity Enhancement and Management Plan (BEMP)⁴, the proposed removal of trees in G2 appears greater than required for good husbandry and CAD management. It is not inevitable that all trees will be infected and die, and the AS suggests a remaining contribution of 10 or more years⁵. Group G2 is categorised as C2 and hedgerow G4 uncategorised. However, they are highly prominent from Seine Lane and land to the west, as having a discernible positive value. By virtue of its verdant and treed nature, the appeal site makes a positive contribution to the character and appearance of the area and the street scene.
10. The recently approved dwelling is significantly lower, a smaller footprint, is of a design and materials in keeping with other dwellings on Strawberry Gardens, set back further, retains most of G4 and G2, and omits a front paved area and garden room. Taking the view that scheme will be built-out were this appeal to fail, this appeal proposal would still result in a significantly greater urbanisation of the appeal site from the new two storey dwelling with lower ground accommodation and a sizeable new garden room. There would be increased circulation and parking areas, paving, and significant hedgerow and tree removal of prominent positive landscape features that appear part of the distinctive treed cutting, particularly when approaching from the west.
11. The approved scheme if built would largely retain the distinction between the settlement and more rural nature of the appeal site surrounds. Even taking the view the appeal site and its vicinity could be viewed as semi-rural, this larger appeal proposal would significantly and harmfully diminish the rural character,

¹ Ref. 21/0229/OUT.

² Ref. APP/T2405/W/20/3254968.

³ Tree Survey, Impact Assessment & Method Statement by RJ Tree Services Ltd (December 2021).

⁴ Page 12 of the Biodiversity Enhancement and Management Plan (July 2022).

⁵ Tree Survey Schedule in the Tree Survey, Impact Assessment & Method Statement by RJ Tree Services Ltd (December 2021)

and distinction of the settlement and countryside in a prominent location close to the settlement boundary.

12. The dwellings on Strawberry Gardens in the closer visual context of the appeal site exhibit some variations in form and composition. However, they have a similar building line and set back to the roadway, similar traditional brick mixes, slate roofs, some render and traditional window designs, resulting in a definable character and appearance. Though the new dwelling at No 2 includes some openings that follow the gabled eaves, its distance and intervening buildings, trees and hedgerows, mean it has a very limited influence on how the appeal site is viewed.
13. This proposed design includes materials such as burnt timber, blue brickwork, timber window screening, various high-profile and angled eaves windows under a zinc clad roof. Though it has been thoughtfully considered with strong aspirations and aspects of high-quality design, a design also needs to be contextually appropriate. Though the zinc will weather, the dwelling would still appear as a harmfully strident addition to the street scene, at odds with those to its west. At its closest point, it would be set approximately 3m from the plot front. This would be significantly closer than the neighbouring properties, appearing highly incongruent and prominent when traversing Seine Lane around the appeal site in a sensitive location, on the entry to or leaving Enderby or Whistle Way. Therefore, it would be significantly detrimental to and harmfully at odds with the character and appearance of the area.
14. The retention of more of G2 and G4 could be the subject of conditions. However, the built layout means most of the hedgerow and more sizeable trees would still be lost and with limited further scope for additional significant landscaping, this would not adequately mitigate the harm. Moreover, noting the close proximity to the southern dwelling elevation I would also have concerns over the provision of adequate light for future occupiers some living spaces. Within the scope of this appeal scheme, while some changes to materials and design aspects would be possible, I am not satisfied this could adequately overcome the harmful effects.
15. For the reasons set out above, the proposal would be significantly harmful to the character and appearance of the area. It would conflict with Policies CS2 and CS18 of the Blaby District Local Plan Core Strategy (2013) (the BDCS) and Policy DM2 of the Blaby District Local Plan Delivery Development Plan Document (2019) (the DDPD). Amongst other things these seek development should be sympathetic to, respect and improve local character, be appropriate to its context having regard to architecture, layout, local development patterns, materials and the landscape and its features, and that permission will not be granted for development that would have a significant adverse effect upon the character and appearance of the landscape.
16. The Blaby District Landscape and Settlement Character Assessment (2008) referred to in the first reason for refusal is superseded. Therefore, while the appeal site includes boundary vegetation characteristic of the Thurlaston Rolling Farmland Landscape Character Area, I have not concluded against it.

Biodiversity and GI

17. The appeal site cutting is designated as part of a GI corridor and part of a historic Local Wildlife Site, which the Preliminary Ecological Appraisal Report

(PEAR) suggests still has an ecological importance. Policy CS19 of the BDCS seeks to safeguard and enhance sites of ecological importance, by resisting development on, or affecting such sites, where it could be alternatively located in less biodiverse areas. Where no alternative sites are available, such sites should be retained with appropriate buffering, mitigation, or if not possible, compensatory measures. Policy CS14 seeks to protect and enhance existing GI naming disused railway lines as important wildlife habitats to be retained.

18. The proposed development would result in disturbance and development in a site and also remove features of notable value close to it. The approved scheme avoids most of the detrimental effects of this proposal. It has not been demonstrated there are no alternative less biodiverse sites available. Therefore, the proposal conflicts with Policy CS19 of the CS. Were the harm to be considered significant there would also be a conflict with the principles set out in paragraph 180a) of the Framework.
19. However, the appellant controls the cutting land north of the appeal site. Despite a harmful loss to biodiversity in the short-term, a limited area of the appellant's land overall and habitat would be disturbed and lost. In combination the PEAR and BEMP consider the presence of species, habitats, and habitat units, suggesting mitigation and enhancement measures have accounted for matters such as lighting, disturbance, and habitat connectivity. The BEMP strategy seeks to achieve a long-term Biodiversity Net Gain (BNG) through measures including scrub and hedgerow creation, tree felling, deadwood piles, woodland enhancement, and long-term management.
20. There are some details absent and I note the Council's reservations over matters such as on-site garden management and connectivity. However, the Council's ecological adviser has assessed the submitted evidence and raises no objection to the proposal subject to the imposition of suitably worded conditions. I see no substantive reason the suggested conditions such as for a 30-year adaptive management plan, cannot be imposed and enforced. Though BNG is an expectation of the Framework and soon expected to become mandatory, the proposals could still nevertheless achieve an overall net gain compared to the status quo. As long as the BNG is realistic and can be delivered as set out, it should be considered a benefit.
21. For the reasons set out above the proposal would result in a conflict with the requirements of Policy CS19 of the BDCS in respect of the protection and avoidance of harm to sites of biodiversity value and GI. However, subject to the imposition of suitably worded planning conditions in respect of matters such as construction management, detailed landscaping proposals and a long-term management plan, the proposal would not conflict with the overarching aims of protecting and enhancing biodiversity and GI in the longer term, and there would be an enhancement. Therefore, there is no harm from the conflict, and an overall benefit in favour of the scheme.

Planning Balance

22. There would be a small temporary economic benefit during construction, and once complete a small on-going spend in the local economy and support to local services and facilities. The Council advises it can demonstrate a housing land supply of 5 over years, so the tilted balance does not apply. The contribution of an additional single dwelling to supply would be a small benefit.

23. The proposal would secure some tidying-up as a limited benefit. The longer-term landscaping and the BNG would be a limited uplift across the appellant's land parcel, and it has also not been demonstrated the harm to character and appearance is necessary to deliver the benefit. However, even though there would be short-term harm, and the benefit would take several years to realise, given the land for future management would be significantly larger than the appeal site, the benefit should be attributed significant weight in favour of the scheme. Overall, the benefits of the proposal attract significant weight in favour of the scheme.
24. Though it does not meet one of the exceptions in Policy DM2 of the DDPD, noting the Council's approval of the smaller dwelling, the Inspector's analysis at land adjacent to No 2, and the accessibility of services and facilities, I do not find harm from any conflict with policies concerning the principle of the location or the access to services and facilities. Considering the scope of suitably worded conditions, were I agree the proposal is compliant or there would be no harm having regard to policies and standards for matters such as highway safety and access, parking, the Conservation Area, the living conditions of neighbouring and future occupiers, renewable energy and resource efficient design measures, these would be neutral matters in the balance.
25. Overall, the policy compliance and benefits of the development attract significant weight in favour of the scheme. However, the proposal would be so significantly harmful to the character and appearance of the area, that the harm from the proposed development outweighs its policy compliance and benefits.

Conclusion

26. The proposal conflicts with the development plan read as a whole. There are no material considerations, including the policies of the Framework, which indicate the decision should be made other than in accordance with the development plan. Therefore, for the reasons given, the appeal should not succeed.

Dan Szymanski

INSPECTOR