



Appeal Decision

Site visit made on 8 August 2023

by A Hunter LLB (Hons) PG Dip MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 14th November 2023

Appeal Ref: APP/W3005/W/23/3317486

Land adjacent Church Lane, Underwood, NG16 5HD

- 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 Mr Marcus Thomas against the decision of Ashfield District Council.
 - The application Ref V/2022/0147, dated 21 February 2022, was refused by notice dated 30 September 2022.
 - The development proposed is described as "Outline planning permission for the erection of four detached dwellings, new highway access and associated landscaping on vacant land. All matters reserved."
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The application was submitted as an outline proposal with all matters reserved for subsequent approval. Plans have been submitted with the application, showing a site layout and elevations for 4 no. dwellings, these are for indicative purposes only. I have dealt with the appeal on that basis.

Background and Main Issues

3. The main issue between the parties is whether the proposal is inappropriate development in the Nottinghamshire Green Belt. In addition, the appellant's Extended Phase 1 Habitat Survey dated August 2022 by CBE Consulting (EHS) has identified that further survey work is required for protected species. In this regard, the parties' views have been sought and taken into account as to whether there is sufficient information submitted to assess the effects of the proposal upon protected species. As a result, the main issues with this appeal are:

- the effect of the proposed development upon protected species; and
- whether the development would be inappropriate development in the Green Belt having regard to the National Planning Policy Framework (the Framework) and any relevant development plan policies.

Reasons

Protected Species

4. The appeal site sits amongst other built development to three sides. It comprises a mainly grassed area with some perimeter field hedges and

- established planting on some of its sides. There are also tall trees beyond the rear boundary of the appeal site.
5. The EHS has identified the appeal site as providing suitable habitat for grass snakes, notwithstanding that on the part of the site surveyed, no such species were recorded.
 6. The EHS recommends a further check prior to works starting for grass snakes. However, given that the initial survey did not assess all the appeal site, and given its conclusions about the site being suitable habitat for grass snakes, this 'recommendation' would not be a final check, but it would indeed be a survey of the areas not already assessed.
 7. I am not aware that this additional grass snake survey has been undertaken and I note the appellant has suggested that such surveys can be conditioned as part of the grant of outline planning permission. However, Paragraph 99 of Circular 06/2005 is clear that a precautionary approach should be taken in respect of protected species, and surveys should be undertaken prior to the grant of planning permission, to take full account of the presence of protected species, which are an important material planning consideration.
 8. Consequently, it would be unreasonable to condition the further grass snake survey, as this information is required from the outset to make an informed decision, consistent with the clear stated guidance in paragraph 99 of Circular 06/2005. Without the survey being carried out, I am unable to make an informed decision about the effect of the proposal on protected species, including assessing whether any mitigation measures would adequately safeguard or compensate for any harm caused to grass snakes by the proposal.
 9. I note that in line with the recommendations of the EHS, satisfactory additional survey work has been undertaken in respect of badgers and bats and that the EHS does not recommend any further survey work. In respect of amphibians, other reptiles, mammals, and birds, the EHS also recommends mitigations, but no further surveys. Had I been minded to allow the appeal, the EHS's recommended mitigations for other protected species, could have been addressed by a suitably worded planning condition.
 10. I therefore conclude that there is insufficient information to fully assess the effects of the proposed development upon protected species, notably grass snakes, contrary to paragraphs 174 and 180 a) of the Framework, which states that development should contribute to and enhance the natural and local environment and planning permission should be refused where significant harm to biodiversity cannot be avoided.

Whether inappropriate development

11. The Framework identifies that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It goes on to state that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
12. The Framework further establishes that the construction of new buildings in the Green Belt should be regarded as inappropriate. Exceptions to this include those set out in paragraph 149. The appellant contends that the proposal meets exception e) of paragraph 149 of the Framework, which permits "limited infilling in villages". There is no indication within the Framework that the term

“limited infilling in villages” relates only to land that falls within a settlement boundary as defined in a development plan.

13. Policy ST1 of the Ashfield Local Plan Review, adopted February 2002 (ALPR) requires development not to be approved where there is conflict with policies within the ALPR. Policy EV1 of the ALPR states that appropriate development in the Green Belt can be limited infilling inside the settlement development limits of four named villages. Underwood is not one of those named villages and the appeal site is not located within its development limit, Policy ST4 of the ALPR states in locations outside of Ashfield’s main urban areas, such as the appeal site, that Green Belt development should be appropriate in accordance with Policy EV1. The ALPR pre-dates the Framework and the relevant Green Belt policies of the ALPR are not consistent with exception e) of paragraph 149 of the Framework.
14. The appeal site is rectangular in shape with one of its longer sides fronting onto Chapel Lane. It is mainly an open space in what would otherwise mainly be a continuous line of development along this part of Church Lane. The Red Lion public house and its car park adjoin one side of the appeal site, with a continuous row of residential properties to the appeal site’s other side and opposite it. There is a footpath that runs in front of the appeal site connecting it on both sides to other parts of the village. I also saw on my site inspection that it is located within the 30mph speed restricted area and not isolated from other parts of the village. The appeal site relates physically and visually to development within the village and its development as proposed would not constitute ribbon development on the edge of the village. All these factors indicated to me that the appeal site is within Underwood village.
15. Although the appeal site is relatively large in terms of its width, said by the appellant to measure approximately some 90 metres, it does occupy a space in an otherwise mainly built-up part of the village, and comprises an ‘infill site’. Moreover, the quantum of development proposed on the site would be ‘limited’, when compared to the size of the village and the number of dwellings along Church Lane. In reaching this view I have had regard to the supporting text to Policy EV1 of the ALPR, which indicates infilling is normally restricted to one or two dwellings. However, this is not explicitly stated within Policy EV1 itself. Furthermore, the word “normally” recognises a greater amount of housing may also be considered acceptable in some cases. Given this, and the limited weight I attach to the ALPR in this respect, I do not find it determinative on this point. If I were to allow the appeal, a condition could be imposed restricting the number of dwellings accordingly.
16. Furthermore, and whilst not required by the Framework, I saw on my site inspection, that 4 no. dwellings on the appeal site would not be out of character with the area, although I acknowledge the exact details would be reserved for assessment at a later stage, if the appeal were to be allowed.
17. I therefore conclude that the proposal would be limited infilling within a village in accordance with exception e) of paragraph 149 of the Framework. Accordingly, I conclude the proposal would not be inappropriate development in the Green Belt and it would accord with the provisions of the Framework in respect of the Green Belt. It is not necessary for me to consider the effects of the proposal on the openness of the Green Belt, or its purpose because these matters are implicitly considered in this exception. Whilst there would be a

degree of conflict with ALPR Policy EV1 in terms of development in the Green Belt, and by association with Policies ST1 and ST4, the Framework takes precedence as Policy EV1 is more restrictive than the Framework in terms of limiting infill development to certain named villages. The conflict with the development plan in this regard is outweighed by the Green Belt policies of the Framework.

Other Matters

18. The Council's statement and report both refer to the proposal having an adverse effect upon the character and appearance of the area, although no reason for refusal on this issue was included in its decision. As the appeal proposal is an outline application with all matters reserved, there are no precise details to assess at this stage. It would be open to the Council to ensure that the site is developed in such a way that would protect the character and appearance of this residential area and the setting of the nearby Lower Bagthorpe Conservation Area.
19. The Council has also referred to the Red Lion public house, located to one side of the appeal site, as a non-designated heritage asset (NDHA) in the language of the Framework. I note that paragraph 203 of the Framework advises that a balanced judgement is taken as to the effect of proposals upon the significance of a NDHA. In this case, the NDHA, is a white painted brick building, having a much larger footprint compared to nearby properties, and it is located close to the footpath edge on Chapel Lane. It appears to have been much extended and altered including unsympathetic replacement windows to its front side. Furthermore, there is a large space between it and the appeal site, used as a car park and outdoor area, which would provide noticeable relief between the closest part of the appeal site and the NDHA. In view of these factors, I am confident that a suitable form of development can be accommodated on the appeal site that would be read separately to, and not be harmful to the setting of the NDHA.
20. I acknowledge that there are many objections raised by local residents in regard to the proposal. However, as I am dismissing the appeal for other reasons, it is not necessary for me to consider those issues raised in my decision.
21. I note that no objections have been raised by the Council in respect of highway safety or in flood risk terms; that off street parking will be provided, which is said would not add to existing on-street parking; that the siting, scale, floor levels, materials, density, and appearance of the proposals would be in keeping with the area; that modern security locks will be used to prevent crime; and the site can be developed in a way that does not harm the living conditions of neighbouring occupiers. I regard these as neutral matters in my decision, which would in any event be requirements for any well-designed scheme to comply with policies within the development plan and the Framework.
22. The appellant has also stated; that the proposal would provide much needed housing, including for the ageing persons; that they purchased the site to prevent unsympathetic development; that local tradespersons would benefit from construction works; the village has a good range of services; that the existing footpath would be widened; and that the trees to the rear of the site are to be retained. These arguments are noted, but they do not either

individually or collectively outweigh the harm identified above to protected species.

Planning Balance

23. The Council have advised that they do not have a 5-year supply of housing, and so paragraph 11 d) of the Framework applies.
24. As I have found no conflict with the effect of the proposed development upon the Green Belt, there are no relevant Framework policies which provide a 'clear reason for refusal' within the terms of Framework Paragraph 11 d) (i) and footnote 7. Paragraph 11 d) ii. of the Framework is engaged and 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.
25. My conclusion above found that insufficient evidence has been provided to enable a proper assessment of the effect of the proposed development on grass snakes. Consequently, it has not been demonstrated that the proposal would avoid an adverse impact on a protected species. The scheme would therefore conflict with Paragraphs 174 and 180 a) of the Framework, which states that development should contribute to and enhance the natural and local environment and planning permission should be refused where significant harm to biodiversity cannot be avoided. I attach substantial weight to this conflict, in view of the legal protection afforded to protected species.
26. I acknowledge an additional 4 no. dwellings would contribute towards Government's plan to significantly boost the supply of housing, although, at this scale of development, the contribution towards the Council's overall supply of housing would be limited. I also note that there would be economic benefits associated with the construction of the development, which could include local trades persons. Again however, these benefits are likely to be small given the scale of the proposed development. There would also be social benefits through the contribution future occupiers make to local community groups. Given the relatively small scale of the development, these benefits are of limited weight.
27. Therefore, I find the benefits of the scheme would be significantly and demonstrably outweighed by the adverse impacts of the development.

Conclusion

28. The proposal would be contrary to the development plan and the Framework, taken as a whole, and there are no other considerations that indicate a decision other than in accordance with them. Accordingly, the appeal is dismissed.

A Hunter

INSPECTOR