

Appeal Decision

Site visit made on 7 November 2023

by Benjamin Clarke BA (Hons.) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 08 December 2023.

Appeal Ref: APP/M2840/W/23/3317607

56 Nest Lane, Wellingborough, Northamptonshire NN8 4AU

- 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 Nick Bowditch against the decision of North Northamptonshire Council.
 - The application Ref NW/22/00711/FUL, dated 13 October 2022, was refused by notice dated 5 December 2022.
 - The development proposed is a residential development for nine dwellings with associated parking and access road (revised scheme of NW/21/01067/FUL)
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues relevant to this appeal are:
 - whether appropriate living conditions would be provided for the future occupiers of the proposed development;
 - whether a safe standard of development would be provided;
 - the effect of the development upon biodiversity;
 - whether the needs of the development are such that a legal agreement would be required; and
 - the effect of the development upon highway safety.

Reasons

Living conditions

3. The appeal proposal contains dwellings that would be arranged in broadly linear patterns. A turning head is also proposed. This would be located a significant distance away from the dwellings to the rear of the site. These would also be adjacent to a car parking area. The proposed homes would be accessed via a road running from Nest Lane.
4. By reason of the distance between the houses located to the rear of the appeal site and the turning head, motorists would need to reverse for a significant distance. Such a manoeuvre would also require turning a corner towards the rear of the site in order to access some of the car parking spaces.
5. Although such a manoeuvre would only need to be made on leaving or entering the development, it would be particularly inconvenient, given that the distance

- needing to be travelled and the fact that other users of the access road would be present. In result, it is likely that the occupiers of the houses to the rear of the appeal site would choose to turn vehicles close to the car parking spaces.
6. By reason of the relatively narrow width of the access road, it is probable that any turning of vehicles would require a more complex manoeuvre. Owing to the proximity of several of the proposed houses to this area, it is likely that the resultant noise would be clearly audible.
 7. This would be audible in the gardens of some of the nearby properties and, during periods of good weather, inside the houses themselves. Therefore such activity would have the potential to prevent all future occupiers of the development from experiencing appropriate levels of peace and quiet.
 8. This would be exacerbated by the fact that the spaces nearest the houses to the rear of the appeal site would not necessarily be associated with one another. In result, the noise being generated from the manoeuvring of a vehicle would not be made by a member of the household that would be experiencing the noise and disturbance.
 9. My attention has been drawn to the nearby development in Swallow Close. However, car parking in this development is either located adjacent to the relevant dwelling or sited in parking courts a short distance away from any sensitive elevations of houses. Therefore, the development has different effects to the appeal scheme.
 10. The proposed access road could accommodate an area where refuse and materials for recycling could be stored pending collection. Furthermore, a condition could cover the implementation and retention of this area. In addition, the proposed houses could be constructed from appropriate materials and have suitable layouts. However, these matters would not overcome my previous concerns.
 11. I therefore conclude that the proposed development would not provide appropriate living conditions for the future occupiers of the development. The development, in this regard, would conflict with the requirements of Policy 8 of the North Northamptonshire Joint Core Strategy (2016) (the JCS). Amongst other matters, this seeks to ensure that developments protect amenity by not resulting in an unacceptable impact on the amenities of future occupiers.

Safety

12. The proposed development would include a relatively large car parking area, in addition to a lengthy path to the back of the dwellings sited near to the rear of the site.
13. Owing to the layout of the development, it would not be possible to view one end of the path from the other end. In result, this lack of visibility would mean that should an individual be able to gain unauthorised access to the path, there would be no natural surveillance in order to deter any anti-social behaviour.
14. This would be exacerbated by the fact that this section of the path would not feature any lighting. Therefore, residents using the path during periods of poor weather or darkness would not have sufficient forewarning of any potential anti-social behaviour that might take place.

15. The submitted plans show that there are gates to be fitted at the entrance of the path. However, owing to the number of households that would be served by the path, there is a likelihood that the gates might be left open, or unlocked. This would give rise to the previously described adverse effects and does not overcome my previous concerns.
16. It has been suggested that this relationship replicates developments elsewhere. I have not been provided with information regarding the planning circumstances of these, which means that I can only give them a limited amount of weight.
17. Nonetheless, the path in the existing scheme does not feature corners. Furthermore, I have been directed towards adopted development plan policies that seek to ensure the creation of safe and secure developments. These policies would be breached by the proposed development.
18. Owing to the number of houses that have been included, the development would have car parking spaces in front of dwellings that are not associated with one another. However, the car parking spaces would be overlooked from windows that would serve routinely inhabited rooms.
19. Therefore, the proposed development would feature natural surveillance of the car parking spaces. This would ensure that the proposed development, in this regard, would be of a safe nature. Although a matter of note, it does not allow me to forego my preceding concerns regarding the access path.
20. I therefore conclude that the proposed development would not provide an appropriate level of safety. The development, in this regard, would conflict with the requirements of Policy 8 of the JCS and the Planning out Crime in Northamptonshire Supplementary Planning Document. Amongst other matters, these seek to ensure that developments seek to design out antisocial behaviour and crime.

Biodiversity

21. The appeal site contains some mature trees, which would be removed in order to facilitate the erection of the proposed houses, in addition to the access road and car parking spaces. In considering this appeal, I have been directed towards Policy 4 of the JCS. Amongst other matters, this seeks to ensure that developments provide a net gain in biodiversity.
22. The proposed development would necessitate the removal of a number of mature trees at the site. In order to deliver a net gain in biodiversity, there loss would need to be compensated, in addition to providing the required increase.
23. This is a concern given that the evidence before me indicates that the proposed development would not be able to provide such an increase in biodiversity on the site owing to the quantum of development that has been proposed. Therefore, the development would not offer the required level of biodiversity improvements.
24. It has been suggested that this might be overcome through the submission of a completed Section 106 Agreement that might secure such improvements to biodiversity through off site provision. However, this has not been referenced in the submitted Unilateral Undertaking.

25. In consequence, the development would not deliver the off site biodiversity improvements that might be required by the adopted planning policy.
26. I have given consideration as to whether a planning condition could be imposed in order to deliver such biodiversity improvements. However, given that it would be necessary to bind land outside of the appeal site for use for biodiversity improvements, it would not meet the necessary legal tests to ensure the delivery of biodiversity improvements throughout the life of the development.
27. The proposed development includes some areas of landscaping. However, these are relatively small. Therefore, without certainty as to how these would be planted, it is not possible to identify whether this would deliver an improvement to biodiversity and, if so, the extent. Given that there is a lack of certainty regarding the level of existing biodiversity, it is therefore not possible to state that this has the potential to deliver the required improvements.
28. I therefore conclude that the proposed development would not deliver an improvement in biodiversity. The development, in this regard, would conflict with Policy 4 of the JCS.

Infrastructure

29. The proposed development would secure the provision of a notable number of dwellings. It is also likely that, owing to the number of bedrooms, that some of these would be occupied by families. Therefore, it is likely that the occupation of the proposed development would increase the demand for facilities such as open space and allotments.
30. Although submitted at a late stage, a Unilateral Undertaking (UU) has been submitted and I have had regard to the provisions of this agreement. I have also given the Council an opportunity to comment upon this UU. This agreement provides a mechanism by which financial contributions for the provision of matters such as green space and allotments. The UU includes suitable trigger points for the payment of such financial contributions.
31. Whilst this would suggest that the development would have a mechanism to respond to the increase in population and therefore, the increased demand for green space and allotments. However, I note that the agreement states 'Dated Insert Day and Month 2023'.
32. However, for a legal agreement to properly executed, it should be dated. Therefore, in the absence of an appropriate date on the agreement, I have some doubt that the UU can take effect. This means that it is not certain that the required mitigation would not be provided.
33. In result, I do not believe that the effects of the development would be adequately mitigated. In result, this would amount to a notable amount of harm.
34. I therefore conclude that the development, in this regard, would conflict with the requirements of Policies 7 and 10 of the JCS; Policy GI4 of the Plan for the Borough of Wellingborough (2019), and the Open Space Supplementary Planning Document. Amongst other matters, these require that developments provide on site where necessary or contributing towards accessible, new or enhanced community services and facilities; and deliver infrastructure.

Highway Safety

35. The proposed development would feature an access road running from Nest Lane and would serve the entire development of eight dwellings. The evidence before me indicates that the number of homes proposed within the development is greater than the number of dwellings that the Local Highway Authority permits to be off of a private drive.
36. Although adoption by the Local Highway Authority would provide a mechanism by which the proposed access road would be maintained throughout of the life of the development, this is not the only mechanism by which maintenance to roads might take place.
37. Furthermore, given that the proposed development would feature several houses, the residents of the development would have an interest in ensuring that the road is maintained to an appropriate standard. This would ensure that the development would be of an appropriate standard. I have no reason to believe that this would not take place. A further condition could have been imposed that would have ensured that the access road would have been constructed from appropriate materials.
38. The access road features appropriate space to the sides for pedestrians. This would mean that the movement of pedestrians and motorists could take place without conflicting with each other.
39. Furthermore, a plan has been submitted that demonstrates that suitable visibility splays could be provided at the junction between Nest Lane and the access road that would serve the proposed development. In result, motorists looking to leave the development would have sufficient forward visibility of approaching vehicles and pedestrians. Therefore, vehicles leaving the site could do so without increasing the risk of collisions.
40. References have been made to Policy 15 of the Northamptonshire Development Management Strategy, which is a document produced by the Local Highway Authority. Therefore, this does not appear to form part of the formal Development Plan. I also note that this policy was not included as part of the list of 'relevant Planning Policies and Considerations' within the Council's Delegated Report.
41. However, even though the number of dwellings that would be served by the proposed development would exceed the maximum threshold of five, I have found that the development could be maintained to an appropriate standard and would feature sufficient visibility splays and pavements. Therefore, I do not find that this document requires me to disregard my previous findings.
42. I therefore conclude that the proposed development would not have an adverse effect upon highway safety. The development, in this regard, would comply with Policy 8 of the JCS. Amongst other matters, this requires that developments prioritise the needs of pedestrians, cyclists and resist developments that would prejudice highway safety.

Other Matters

43. The appeal site has previously been used for residential purposes. However, the dwelling has since been demolished and appears to have been of a smaller scale than the appeal scheme. Therefore, the effects arising from the proposed

development are different. In consequence, the previous use of the site does not allow me to disregard my previous concerns.

44. Wellingborough town centre is near to the appeal site. Whilst this means that the occupiers of the development would have ready access to the services and facilities on offer, this is not sufficient to provide a satisfactory standard of development.
45. I understand that the proposed development is indicated within the appeal documentation to be located within the 3km Zone of Influence of the Upper Nene Valley Gravel Pits Special Protection Area. However, given that I am dismissing this appeal for other matters, I do not need to give this matter further consideration.
46. Concerns regarding the manner in which the planning application was considered by the Council fall outside of the scope of this decision.

Conclusion

47. Although the development would not have an adverse effect on highway safety, this is outweighed by the harm arising from the lack of appropriate living conditions and the adverse effects arising to safety, biodiversity and the lack of a completed legal agreement. Accordingly, the scheme would conflict with the development plan taken as a whole. There are no material considerations, which indicate the decision should be made other than in accordance with the development plan. Therefore, for the preceding reasons, I conclude that the appeal should be dismissed.

Benjamin Clarke
INSPECTOR