

Appeal Decision

Site visit made on 7 November 2023

by C Billings BA (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 December 2023

Appeal Ref: APP/J3015/W/23/3323373

**Land to the east of Sandy and to the rear of 70 & 72 Sandy Lane,
Bramcote, Nottingham, Nottinghamshire NG9 3GS (Easting 451645
Northing 338494)**

- 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 Andrew Rutherford of NG8 2RJ Ltd against the decision of Broxtowe Borough Council.
 - The application Ref 22/00790/FUL, dated 4 October 2022, was refused by notice dated 1 December 2022.
 - The development proposed is the erection of two dwellings on land off Sandy Lane, Bramcote to enable the removal and eradication of Japanese Knotweed, to create a publicly accessible woodland nature park (to be known as Bramcote Unity Park), extending across all the remaining land in the ownership of the applicant (i.e. all land within the blue line ownership area) and to bring about significant improvements in the biodiversity value of this land.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs has been made by Andrew Rutherford against Broxtowe Borough Council. This application is subject to a separate decision.

Preliminary Matters

3. The description of development in the heading above has been taken from the planning application form. However, the Council's decision notice describes the proposal as: construct two detached dwellings. The submitted site plans show a red and blue line site boundaries. It is within the red line boundary that the proposed development would comprise the construction of two detached dwellings and associated access and landscaping, including an attenuation pond. It is within the wider blue line site boundary (blue area) that certain biodiversity enhancements and other improvements are proposed.
4. The site location plan shows that the Council's administrative boundary includes all of the land within the red line boundary. Also, whilst some of the land within the blue line boundary is within Broxtowe Borough Council, the majority of this land falls outside its administration and is within that of Nottingham City Council (NCC).

5. A completed planning obligation dated 30 July 2023 and made under section 106 of the Town and Country Planning Act in the form of a unilateral undertaking (the UU) was submitted as part of the appeal. I consider the UU within the reasoning below.
6. Since the appeal was submitted, a revised version of the National Planning Policy Framework (the Framework) has been published in September 2023. The relevant sections of the Framework have remained unchanged within the updated version of the Framework, which is a material consideration in planning decisions.

Main Issue

7. The main issue in this appeal is whether the benefits associated with the proposal would outweigh the harm or loss of a Green Infrastructure Asset and Local Wildlife Site.

Reasons

8. The appeal site is accessed via a private drive off Sandy Lane and comprises an area of privately-owned, partly wooded undeveloped land. The appeal site lies between two public open spaces. The Sandy Lane Local Nature Reserve (LNR), which is mainly wooded and contains an informal football pitch and play area; and the Alexandrina Plantation LNR to the north, which is outside the Council's authority area. The site forms part of the Bramcote Hills and Bramcote Ridge Prominent Area for Special Protection (PASP), a Green Infrastructure Asset (GIA); has a Green Infrastructure Corridor (GIC) running through it; and is part of the Alexandrina Plantation Local Wildlife Site (LWS).
9. Policy 16 of the Greater Nottingham, Broxtowe Borough, Gedling Borough, Nottingham City Aligned Core Strategies Part 1 Local Plan, adopted September 2014 (GNACS) sets a strategic approach to the delivery, protection, and enhancement of Green Infrastructure. Amongst other things, there is a requirement that existing Green Infrastructure Assets (GIAs) are protected and enhanced; and the need for and benefit of new development will be weighed against the harm caused.
10. Policy 28 of the Broxtowe Borough Council Part 2 Local Plan 2018-2028 adopted October 2019 (BLP) sets out that permission will not be granted for development that results in any harm or loss to the GIA, unless the benefits of development are clearly shown to outweigh the harm. The supporting text of Policy 28 of the BLP explains that the PASP are hills and ridges comprising prominent areas of attractive landscape, which provide distinct and permanent landmarks near the edge of the Greater Nottingham conurbation. It also sets out at paragraph 28.4 of the Policy 28 justification that, benefits which could outweigh the harm (to a GIA) include the replacement of equivalent or better provision in terms of quantity and quality in a suitable location.
11. Policy 31 of the BLP concerns Biodiversity Assets (BA), which applies to any LWS and sets out, amongst other things, that in all cases permission will not be granted for development that results in any significant harm or loss to the

BA, unless the benefits of the development are clearly shown to outweigh the harm.

12. The appeal site contains some trees, scrub, and significant overgrowth of Japanese Knotweed (JKW). The characteristically green and natural nature of the appeal site, combined with the local topography is consistent with the description of the PASP. The site therefore forms part of the verdant backdrop that contributes to the visual character of the wider GIA, a distinctive green wedge along the boundary between Broxtowe Borough Council and Nottingham City Council.
13. The appeal scheme proposes the erection of two detached dwellings on the appeal site, which would be accessed off the private driveway that extends from Sandy Lane. The layout, design and setting of the proposed dwellings has been designed to have regard to the local context and to enhance biodiversity within the site. The proposed dwellings would not be visually prominent, and no concerns have been raised in respect of their detailed design. I am also aware that the current scheme would be a much smaller proposal, compared to a previous iteration that was dismissed at appeal in 2021 (Appeal Ref: APP/Q3060/W/21/3267115).
14. Nevertheless, the proposed dwellings, together with their gardens and associated residential use of the site would introduce domestic activity, built form, hard landscaping, and associated domestic gardens. This would advance a material change away from the overgrown but fundamentally green, undeveloped, and natural part of the PASP to something characteristically suburban. As the appeal scheme does not propose any replacement provision of the GIA to domestic use, part of the conservation value of the appeal site would still be lost by virtue of the proposed residential development, which would also result in harm to the GIA. There would also be significant harm to the LWS due to the domestic use of the appeal site and overall increased use of the site and wider blue line boundary area.
15. The appellant contends that the harm to the GIA and LWS as a BA would be outweighed by the need for and benefits of the proposed development. Amongst the benefits would be the removal of JKW within the appeal site and on some of the land within the blue line boundary, as well as to assist neighbouring landowners regarding JKW. Notwithstanding the time of year that I visited, and that thick vegetation limited my ability to access the appeal site, I did observe JKW to be evident, as identified in the appellant's evidence.
16. I note that the existence of JKW could hinder the appellant's disposal of the site and that eradication of the plant is challenging and costly. However, the appellant, as landowner, has certain obligations in relation to the JKW in respect of preventing its spread to neighbouring landownership in any case, even if the development did not take place. JKW is a non-native, invasive plant species and therefore its removal from the appeal site and eradication also from parts of the wider locality, would be beneficial in terms of biodiversity and habitat enhancement and preventing its spread. Nevertheless, the removal and better management of JKW on the appeal site

moving forward and allaying the concerns of neighbours in relation to JKW, are not entirely dependent on the proposal coming forward.

17. Moreover, as demonstrated by the Development Viability Appraisal, there would be added land value as a result of the proposed development. I appreciate that the Nottingham Surveyor's assessment identifies there would be surplus from the costs of the two dwellings, which could be used to eradicate the JKW and undertake restoration, planting, and maintenance of the proposed Woodland Community Park. However, I do not have any substantive details of the costs of such works and the long-term maintenance costs associated with this community park to evidence this could be achieved after landowner profit.
18. The proposal would also offer habitat enhancements that would improve the local habitat environment and create Biodiversity Net Gain (BNG). The creation of enhancement planting within the blue area, I acknowledge, is a matter appreciated by Nottinghamshire Wildlife Trust's officer and noted to be in line with the Trust's aspirations for a BNG county standard. However, whilst BNG is a nationally encouraged benefit of development proposals and Policy 31 of the BLP requires all development proposals to seek to deliver a net gain in biodiversity, there are currently no specific national or local standards in place to specify how much gain is required.
19. The proposed biodiversity unit uplift provided by the scheme would be higher than the mandatory 10% requirement for BNG due to come into force in 2024, under the Environment Act 2021. However, this mandatory requirement would only relate to biodiversity units in relation to the development site itself and not to that of a wider area (blue area) also. Overall, the benefits associated with biodiversity enhancements carry moderate weight in favour of the proposal.
20. Additionally, I appreciate that the proposed works to land within the blue line boundary would support the aspirations of Greenwood Community Forest, and the restoration of heathland habitats and nature recovery. However, it is not clear from the evidence provided why such aspirations could not be realised without the proposed development, as no substantive evidence has been provided about the specific works that would be carried out and the costs of such works, nor to explain how this would directly relate to the proposed development. I therefore provide limited weight to these benefits.
21. The land within the blue line site boundary has no formal access rights across it and the appellant makes the point that it could be enclosed to prevent trespassing at any time. The proposal would secure formal public access to a newly designated Woodland Community Park (WCP) on the currently private land. However, even if the appellant chose to restrict public access, the green wedge landscape function and positive contribution that it makes to the GIA would be protected. The formalisation of public access and creation of the WCP could provide improved pedestrian links and access across the GIA. However, even if this would satisfy a broader strategic objective to connect greenspaces, I have no substantive details of existing links to gauge how these might be meaningfully improved.
22. I acknowledge that the owner has had issues regarding the management of the site and trespassing therein, but these are private matters. It is also not

clear from the evidence why in making the land within the blue area accessible to the public, this would mean the landowner can be less vulnerable to insurance claims, as the land would remain in private ownership. Bearing in mind there are currently limited measures in place to restrict public access, I consider the enhancement to the GIA would be limited, which carries limited weight as a benefit in favour of the proposals.

23. The case is made that the proposal would help to meet an identified need for more open space in the locality; enhanced green connectivity links, which may contribute towards the policy agendas of the Big Track and the Robin Hood Way. Although I note the contents of the Broxtowe Borough Council Green Infrastructure Strategy (2015-2030), this does not offer compelling evidence to show that there is a particular lack of public open space/amenity space provision within the local area, nor that a community park or a public open space is required to support the delivery of the proposed dwellings. Indeed, the Sandy Lane Public LNS is near to the appeal site and provides an area of publicly accessible open space. This causes me to doubt that there is a demonstrable need for the proposed development. Therefore, this reduces the weight to the benefits associated with providing an accessible and privately managed Community Park area adjacent to the appeal site.
24. A corner of the land containing informal football pitch within the Sandy Lane Local Nature Reserve (LNR) currently falls within the ownership of the appellant. The proposal would realise the transfer of this land to the Council, to allow the lawful use and public liability insurance benefits to this land. In respect of the regularisation of the use and ownership of the corner of the football pitch, there is no suggestion that the appellant would likely fence off or restrict its use going forward.
25. Nevertheless, the proposed regularisation of the land to Council ownership would provide some wider benefit. However, bearing in mind it is a relatively small piece of land and that it has been in public use for some time, I attribute limited weight to this as a benefit of the proposal.
26. Drawing all of the above together, I do not consider that, even cumulatively, the weight of the benefits in favour of the proposal would outweigh the harm and loss to the GIA and LWS. A lack of objection on certain matters that are unrelated to the main issue is a neutral consideration that does not weigh in the scheme's favour. I therefore find the proposal would conflict with Policies 28 and 31 of the BLP (2019) and Policies 16 and 17 of the GNACS (2014), which, amongst other matters require existing GIAs to be protected and enhanced and that development would only be allowed where the benefits clearly outweigh the harm caused to the GIA and BA/LWS.

The UU

27. The UU, amongst other things, secures covenants to the Council that would secure the submission and approval of a Woodland Replanting Scheme, the layout and completion of the WCP, details of a Management Company and future maintenance of the WCP; provisions to allow for unfettered access to it; as well as the transfer of part of the land within the LNR to the Council. The Council has indicated that it does not consider the UU necessary in order to make the proposed development acceptable, nor that some of the obligations contained within would be enforceable. Notably, much of the land

that is proposed to become the WCP does not fall within the Council's boundary but within the neighbouring authority area controlled by NCC.

28. I agree that the UU has been drafted to state that the Borough Council is the authority by whom the obligations are enforceable. I also note that the UU is unsupported by evidence in title and the agreement has not been certified by a solicitor as a true copy. Nevertheless, even if the UU had been drafted to include NCC as a second authority by whom the UU obligations would be enforceable, and I had been satisfied that it was appropriately executed and certified, I do not consider that the enhancements and benefits that the UU would secure, would be sufficient to outweigh the harm or loss to the GIA and LWS identified. Having also considered whether conditions could mitigate the harm, I do not consider the harm caused would be clearly outweighed and so overcome the policy conflict arising from the development.

Conclusion

29. Overall, whilst the proposal would realise some benefits, including the removal of the JKW and BNG, these and any of the other benefits advanced would not outweigh the harm identified.
30. For the reasons given above, I conclude that the proposed development would conflict with the development plan taken as a whole and material considerations, including the National Planning Policy Framework, do not indicate that the appeal should be determined other than in accordance with the development plan.
31. I accordingly dismiss the appeal.

C Billings
INSPECTOR