



Appeal Decision

Hearing Held on 6 December 2023

Site visit made on 8 December 2023

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 December 2023

Appeal Ref: APP/K2420/W/23/3327377

**Forest Hill Golf And Country Club, Markfield Lane, Botcheston,
Leicestershire LE9 9FH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (the Act) against a refusal to grant outline planning permission.
 - The appeal is made by David Daniels and Neil Vitale (Sparsis Leisure Limited) against the decision of Hinckley and Bosworth Borough Council.
 - The application Ref 22/00752/OUT, dated 8 August 2022, was refused by notice dated 13 March 2023.
 - The development proposed is 98 bed hotel with leisure facility and spa (class C1).
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Decision

1. The appeal is dismissed.

Applications for costs

2. At the hearing, applications for costs were made by David Daniels and Neil Vitale (Sparsis Leisure Limited) against Hinckley and Bosworth Borough Council (HBBC) and against Leicestershire County Council (LCC) as the relevant highway authority and as a party to the appeal. Also, an application for costs was made by HBBC against the appellants. These applications are the subject of separate decision notices.

Preliminary Matters

3. The application leading to this appeal seeks outline planning permission with all matters reserved apart from details of access. In the interests of clarity, I confirm that my assessment is based upon the details of the access onto Markfield Lane as shown on drawing numbered F19109/13 revision C. The appellants' representatives confirmed at the hearing that the details of layout, appearance, scale and landscaping as shown on this and the other drawings have been submitted for illustrative purposes only. I have treated them as such in my assessment.
4. Prior to the hearing I was provided with 3 separate unilateral undertakings made under section 106 of the Act. These are signed but undated and so they are not completed. I allowed time after the close of the hearing for the appellant to submit a completed undertaking. An undertaking dated 11 December 2023 has been submitted (hereafter referred to as the UU). This includes planning obligations on (i) the payment of a highway contribution, (ii) the provision of an electric mini bus service (the mini bus planning

obligation), and (iii) a monitoring fee in relation to a travel plan. The HBBC and LCC has had an opportunity to comment on the UU and I have taken it and the responses into account in my consideration of the appeal.

5. On 19 December 2023, a revised National Planning Policy Framework (the Framework) was published. The revisions do not materially change the planning policies pertinent to the main issues for this appeal. As such, I am satisfied no injustice would be caused to any party by considering the Framework in my assessment.

Main Issues

6. The main issues are (i) the effect of the development on the character and appearance of the area, (ii) whether it would be in a suitable location having regard to development plan policies, the Framework and accessibility, (iii) the effect of the development on great crested newts (GCNs), and (iv) the effect of the development on highway safety and capacity.

Reasons

Character and appearance

7. The appeal site was previously used as a builder's landfill site and as a result the ground is uneven. I saw the internal part of the plot was covered by ruderal vegetation with a few small piles of exposed rubbish. A line of hedges and trees on the roadside boundary screens the interior part of the site from the highway. A wooded area adjoins the site to the rear.
8. Adjacent to the site is a golf course. The golf clubhouse, car park, driving range buildings and signage to the front can all be seen from the road. Also, there is a small complex of business units and a dwelling on the opposite side of the highway. Nevertheless, grass verges, hedgerows, woods and fields give the locality a significant rural feel.
9. Apart from the roadside hedges and trees, the vegetation on the site is of no visual interest. However, the lack of buildings means it appears more as part of the countryside rather than part of the golf course complex. Also, the site's openness allows views towards the wooded area to the rear, particularly from the nearest parts of the golf course. For these reasons, the plot contributes to the rural character of the locality.
10. The drawings indicate the proposed building and car park set back from the road behind existing vegetation and proposed planting. The development could be designed to be only visible from a short stretch of the road but it is likely to be seen at the proposed access. Also, it is bound to be visible from parts of the existing car park, from the terrace to the rear of the golf club and from the nearest parts of the golf course. It would also be clearly seen from within the site itself by visitors to the hotel. Therefore, it would have a noticeable albeit localised visual effect.
11. The introduction of the proposed building and car park would markedly change the site's appearance and would reduce its openness. Also, the creation of the access and visibility splays would require removal of roadside vegetation. As such, the rural feel of the site and its contribution to the countryside would be significantly undermined.

12. The development would be fairly close to existing buildings and so it would not stand out as being isolated. Even so, it would be seen as a sizeable encroachment onto vacant land beyond the extent of the golf course complex. In particular, the attractive rural views from the golf course across the site to the adjoining wooded area would be spoilt. In these regards the development would not recognise the intrinsic character and beauty of the countryside.
13. Details of scale are not before me for consideration but the plans indicate a single storey building with a sizeable footprint. At the hearing, the appellants accepted that the proposed building would need to be larger than the existing clubhouse in order to accommodate 98 bedrooms, leisure facility and spa. It is also highly probable the building would be larger in terms of footprint than the business buildings and dwelling on the opposite side of the road. Accordingly, the hotel would not respect the scale of nearby buildings.
14. New tree planting as illustrated on the plans would contribute to the natural qualities of the area and would reflect the site's location within the National Forest. However, the benefits in these regards would only be appreciated in many views within the context of the proposed hotel and car park. As such, I am unconvinced that new planting would ensure the development blends into the area, particularly given the likely ground coverage of the built elements of the development. Moreover, the proposed vegetation would not fully address nor override the loss of openness and the rural feel to the site.
15. I understand the appeal scheme is for a smaller hotel than a previously refused proposal. However, it does not follow that the revisions fully address previous concerns. Indeed, for the reasons given above, I conclude the development would have a harmful effect on the character and appearance of the area. In these regards, it would not accord with policies 21 and 23 of HBBC's Core Strategy adopted 2009 (CS) and policies DM4 and DM10 of HBBC's Site Allocations and Development Management Policies DPD 2016 (SADMP). Amongst other things, these look to ensure development does not have a significant adverse effect on the open landscape character of the countryside and is of a scale that complements the surrounding area.

Suitability of location

16. The site is outside any settlement as defined under the CS or SADMP and so under the terms of the development plan it lies in the countryside. Even so, CS policy 23 encourages tourism development and holiday accommodation in suitable locations. Furthermore, SADMP policy DM24 supports new tourism facilities across the borough, including within the countryside. However, this support is on the basis that proposed facilities can be accessed by a range of sustainable transport modes so as to reduce reliance on the private car.
17. There are no pavements outside the appeal site or that lead all along Markfield Lane to the nearest villages of Botcheston and Markfield/Field Head. Also, the road is unlit. As such, the highway environment would not allow safe and comfortable walking between the proposed development and these settlements. Moreover, the nearest bus stops are at the villages and beyond a reasonable walking distance from the site. At paragraph 5.4 of their appeal statement (highways), the appellants' representative accepts that the appeal site is not supported by good levels of public transport and pedestrian infrastructure. I find no reason to disagree with this view.

18. The mini bus planning obligation would prevent occupation of the hotel unless there are 2 buses to provide an "on-demand service" for staff and visitors and linking the development to bus routes in the nearest villages. The UU explains that the details of this service will be established via on-going travel surveys during and post construction of the hotel. The frequency and timings of the mini bus service have not been defined in the planning obligation. Also, the term "will be established via ongoing survey" fails to clearly explain how any identified demand will be used to decide the level of service to be provided. Furthermore, the mini bus obligation only requires a service for a minimum of 5 years. Consequently, I am unconvinced the mini bus planning obligation would secure a service that would provide a realistic, meaningful and long term alternative to private car usage.
19. I have considered the possibility of imposing a planning condition in addition to the mini bus planning obligation to secure the provision of a bus service. However, without any firm information on the demand for such a service or how this would be identified and catered for, I find such a condition would be uncertain and imprecise. A condition that specifies a level of service would be more certain but it may put an unjustifiable financial burden on the appellants if there is no commensurate demand. As such, the imposition of a condition to secure a bus service would be unreasonable.
20. The appellants indicate that a travel plan would be adopted that aims to reduce the amount of single occupancy car trips to and from the development. This could be secured through the imposition of a planning condition and the relevant planning obligation would ensure the travel plan would be monitored. However, even if measures to encourage car sharing were successful, these would only reduce the number of motor vehicle journeys. They would not decrease reliance on the private car to access the development. As this is the stated aim of SADMP policy DM24, such measures would not address any conflict with the policy. Similarly, the provision of electric vehicle charging points would not result in the development being more accessible by modes of travel other than the private car.
21. The site is within a reasonable cycling distance from the nearest settlements, although this would only be a realistic travel option for hotel staff and visitors to the development who live in the local area. Accessibility of the site by cycle would not reduce reliance on the private car for most overnight hotel guests coming from further afield.
22. At the hearing, both main parties agreed that the proposal would represent significant development as referred to at paragraph 109 of the Framework (previously paragraph 105). This states that significant development should be focused on locations where the need to travel is limited and that offer a genuine choice of transport modes. Even when having regard to the rural location of the site, there would be a lack of realistic opportunity for visitors to access the proposal by non-car means, other than by cycle from short distances away. As there would be no genuine choice of travel options, paragraph 109 of the Framework offers no support for the proposal.
23. Paragraph 89 of the Framework (previously paragraph 85) states that sites to meet rural business needs may not be well served by public transport. SADMP policy DM4 reflects this advice in allowing development in the countryside that significantly contributes to economic growth, job creation and diversification of

a rural business. It is obvious that the proposed development would need to be in a rural location if it is to help the golf course business to expand and diversify through linked trips. However, under paragraph 89 and SADMP policy DM4 there is a requirement for development to be sensitive to its surroundings and to avoid adverse effects on the character of the countryside. In light of my conclusions on the first main issue, the proposal would not comply with this requirement. As such, it is not supported by paragraph 89 of the Framework and it would not constitute a sustainable form of development in the countryside as defined under SADMP policy DM4.

24. Visitors may well use a combination of the proposed facilities and those at the golf centre. People that use the golf course and conference facilities currently need to leave the site if wishing to stay overnight at a hotel. The proposal would reduce the need for such trips away from the site. However, there is little evidence before me to indicate that in overall terms the development would lead to a reduction in journeys. Indeed, at the hearing it was explained that the scheme seeks to increase the overall visitors to the site by offering overnight accommodation and a broader range of facilities. Also, there can be no certainty that the hotel would only be visited by those that use the golf club. The inclusion of leisure facilities and spa suggests that it would also attract people who do not use the golf course or any of the other existing facilities.
25. Therefore, I anticipate the development would increase travel to and from the site. Most of these trips would be private car with a limited opportunity for some to be made by cycle. In overall terms, the development would not be accessed by a range of sustainable transport modes and so I conclude it would not be in a suitable location having regard to CS policy 23 and SADMP policy DM24. Also, it would not represent a sustainable form of development in the countryside as defined under SADMP policy DM4. Its location would not be supported by the provisions of the Framework when considered as a whole.

Great Crested Newts

26. The Conservation of Habitats and Species Regulations 2017 (as amended) impose a duty on me to consider whether European Protected Species (EPS) would be affected by the development and whether associated mitigation measures would be effective. GCNs are so protected.
27. The appellants' GCN environmental DNA survey report dated June 2022 (the eDNA report) explains how tests on water samples from ponds close to the appeal site have identified the presence of GCNs in one of the ponds. The eDNA report advises it is likely that GCNs are present on the appeal site. There is no reason for me to dispute the report in these regards.
28. The eDNA report recommends that presence/absence surveys are conducted over a minimum of 4 visits between mid-April and mid-May. If GCNs are found then further visits will be needed. The appellants' representatives informed me at the hearing that these surveys have not been carried out.
29. Instead, the appellants have provided an amphibian method statement dated October 2022. This suggests that the eDNA report indicates the presence of a small population of GCNs in the identified pond. However, the eDNA report does not include any statement on the size of the GCN population that could be affected by the proposal. The purpose of the recommended surveys is to

- provide an estimate of the population. As such, I am uncertain how it can be firmly concluded that only a small population would be potentially affected.
30. The method statement includes a set of measures to be adopted during the construction works on the proposed development. However, these measures are seemingly based on there being a limited potential for the site to contain GCNs. This assumption is at odds with the eDNA report and the stated view that it is likely GCNs are present on the site.
31. Without the recommended presence/absence surveys and a more substantiated understanding of the situation, I am unable to carry out my regulatory duty to consider how GCNs may be affected by the proposal. Also, I am unable to assess whether the mitigation measures would be effective in addressing harm that may be caused. The imposition of a planning condition to address this matter would not allow me to carry out a proper assessment as required under the aforementioned regulations. Moreover, such a condition would be contrary to advice at paragraph 99 of the Officer of the Deputy Prime Minister Circular 06/2005. This says it is essential to establish the extent to which EPS may be affected by a proposal before granting planning permission.
32. As an alternative to further survey works, HBBC would accept the appellant entering into a GCN district level licensing scheme. However, the appellants have not entered into the scheme and HBBC say that this is required before planning permission is granted. In any event, I fail to see how any licence could be deemed appropriate compensation without a clearer appreciation of the particular effects of the development on GCNs.
33. For these reasons, I conclude that insufficient information has been provided to show the proposal would avoid harm to GCNs or that any harm could be appropriately mitigated. In these regards, the development would be contrary to SADMP policy DM6. Amongst other things, this resists harm to features of ecological value unless appropriate mitigation measures are provided.

Highway safety

34. The proposed access would serve the hotel and be used as the new primary access for the golf course and clubhouse. An existing access would be retained but used only as a service and staff entrance for the golf complex.
35. The highway safety concerns raised by HBBC and LCC relate to:-
- the location of the proposed access and visibility;
 - whether there is the need for a ghost lane to be provided so as to reduce the risk of accidents associated with vehicles turning right from the road onto the site;
 - the safety of pedestrians crossing the road between the development and the public footpath on the other side of Markfield Lane; and
 - the geometry of the proposed access and potential over run of larger vehicles onto on-coming traffic when entering and leaving the development.
36. The first 3 of these issues were raised as problems in the appellants' road safety audit stage 1 and dated 17 June 2022 (the RSA). The RSA also raises a concern over the darkness of Markfield Lane and recommends the installation of street lighting on either side of the proposed access. At the hearing, the LCC

officer advised that this is a matter that could be resolved by the highway authority. As such, I am satisfied that this identified problem could be appropriately addressed.

37. The access would be at the start of a bend in Markfield Lane when travelling from north to south. Road signs on the approach warn of the bend and road markings advise drivers to slow down. There is a 50mph speed limit on the highway as it passes the site.
38. Paragraph 2.1.1 of the Design Manual for Roads and Bridges CD123 (DMRB) states that priority junctions such as the proposed access should not be located on a sharp curve on a major road. However, given the nature of the highway and the fairly modest level of traffic movement that I observed on my visit, I consider it inappropriate to treat Markfield Lane as a major road. Also, the bend is not so sharp to warrant hard braking when travelling at the speed limit. As such, the referred to DMRB statement is not determinative in my assessment on the suitability of the location of the access.
39. Due to the bend in the road, drivers leaving the development at the access point would have to look back over their left shoulder to check for vehicles approaching from the south. The RSA states that this could decrease reaction time and increase the risk of pull-out type collisions. However, it is proposed to remove and cut back roadside vegetation to provide a 160m long visibility splay to the south of the access. This would allow drivers leaving the development to see traffic for a significant distance on its approach to the site. To achieve sufficient visibility, drivers may need to lean forward. However, I am taken to no specific guidance that indicates accesses on the inside of bends on non-major roads are inherently unsafe, particularly where appropriate splays are provided. Overall, I find the location of the access and the proposed visibility splays would be acceptable in terms of highway safety.
40. The appellants have provided predictions on the level of traffic movement that would use the proposed access as well as information on the annual average daily traffic using Markfield Lane¹. In light of this information, figure 2.3.1 of the DMRB indicates that a ghost lane right hand turn may be required. However, the note following this figure explains that this is an approximate level of junction provision prior to more detailed traffic modelling to check capacity. The appellants have carried out junction modelling exercises and so they have followed the DMRB guidance.
41. As a sensitivity exercise, the appellants have carried out modelling that considers the operation of the proposed junction with double the amount of traffic movements onto and off the site than predicted. The appellants conclude that this modelling exercise shows that there would be no significant queuing of traffic waiting on Markfield Lane to turn right onto the proposed development. The LCC officer queries the accuracy of the appellants' predicted trip generation figures as well as the results of the modelling exercise. To my mind, the modelling carried out as a sensitivity test provides sufficient reassurance that the appellants' assessment is valid and adequately demonstrates the development would not cause significant queuing on Markfield Lane.
42. In any event, I am mindful that the visibility splay to be provided to the south of the access would also improve forward visibility along the road when

¹ Paragraph 8.1.9 of the Bancroft Consulting Transport Assessment July 2022

travelling from the south. Also, the bend in the road and “slow” road-markings suggest that drivers would not be accelerating but would be travelling within the speed limit when approaching the site. For these reasons, I anticipate that drivers coming from the south would be well aware of vehicles waiting to turn right at the access and would be able to slow down and stop safely if required to do so. Therefore, I am satisfied that a right hand turn lane is not needed for safety reasons.

43. The proposed visibility splay and clearance of roadside vegetation would also improve intervisibility between pedestrians wanting to cross the road at the access point and drivers on Markfield Lane. Therefore, I am satisfied crossing the road would be safe, even if the development results in more pedestrians travelling between the site and the public footpath opposite.
44. Drawing numbered F19109/10 revision B indicates that larger vehicles such as coaches would need to cross partly onto the other side of the road in order to enter the proposed access. Also, those turning left out of the egress would need to partly over run onto the other side of the road. Such movements as indicated would potentially bring larger vehicles into conflict with on-coming traffic. However, the improved forward visibility along Markfield Lane due to the proposed vegetation removal would give drivers time to consider their movements so as to avoid the need to pull across in front of other road users. Moreover, the development is likely to only generate a small number of large vehicle movements. Accordingly, the shortcomings of the proposed access in these regards do not pose an unacceptable risk to highway safety.
45. HBBC and LCC suggest that the existing golf club access would be safer than the proposed access as it is further away from the bend. Nevertheless, for the reasons given above, I conclude the development including the proposed access would not significantly prejudice highway safety. In these respects, the scheme would accord with SADMP policy DM17.

Highway capacity

46. HBBC and LCC advise that the roundabout on the A50 at Field Head operates over capacity at peak times. It is suggested the development could result in an increase in traffic using the roundabout during the afternoon peak hour and so exacerbate congestion. To address this concern, the Councils seek a contribution towards the Coalville Transport Strategy (CTS). The level of funding requested is based upon the appellants’ trip generation predictions, which LCC dispute. However, the contribution as requested and agreed to through the statement of common ground would be secured through the relevant planning obligation as set out in the UU.
47. The level of information before me on the capacity issues at the Field Head roundabout is fairly scant. For example, it is unclear whether it is traffic from any particular arm of the roundabout that causes congestion problems during the peak hours. Moreover, it has not been shown that the particular traffic patterns associated with the proposal would cause a severe residual impact on the transport network, regardless as to whether I accept the appellants’ trip generation figures or not. I understand several other developments in the area have already provided contributions towards the CTS but these would have been assessed having regard to the specific patterns of traffic that they would generate as well as their proximity to the roundabout. Therefore, these other

cases do not demonstrate the appeal proposal would add to any congestion problems at Field Head.

48. As such, I find the evidence fails to clearly indicate how traffic associated with the development would cause congestion or severe highway network capacity issues at the roundabout. Although the statement of common ground indicates the appellants' agreement to the highway contribution, I am unable to conclude it is required to make the development acceptable in planning terms. Therefore, it does not meet the tests at regulation 122 of the Community Infrastructure Regulations 2010 (as amended).
49. The LCC officer also advised at the hearing that traffic generated by the proposal would add to congestion issues at the Botcheston Road and Desford Lane junction to the south of the site. However, again, the evidence before me fails to clearly explain why this claimed highway capacity issue occurs and how this would be affected by vehicular trips associated with the development. In the absence of such evidence, I am unconvinced the development would have a severe adverse effect at this junction.
50. Therefore, I conclude the development would not have a severe nor significant impact on the capacity of the wider highway network. In these regards, it would accord with SAMDP policy DM17.

Other matters and planning balance.

51. The proposal would avoid an unacceptable effect on highway safety and capacity but for the reasons set out under the first 3 main issues it would be contrary to CS and SADMP policies when read as a whole. It follows to consider whether other factors justify allowing the appeal.
52. LCC has indicated that in addition to the planning obligations in the UU, an additional contribution is needed towards monitoring compliance of the development and payment of the highways contribution and travel plan monitoring fee. However, the terms of the UU before me places no significant burden on LCC over and above the monitoring of the travel plan. As such, I am unconvinced the suggested additional contribution is necessary to make the development acceptable in planning terms. The failure to include such a planning obligation does not weigh against the development.
53. The proposal would provide an opportunity to enhance the biodiversity value of the site, primarily through tree planting. Improvements in these respects are likely to be modest given the indicated extent of building footprint and car parking compared to the size of the site. Also, the development would enable visits to the National Forest and local trails and so provide an opportunity for people to appreciate nature. These benefits attract moderate weight.
54. The scheme would create employment during construction as well as provide a range of jobs once in operation. Additional tourist visits as a result of the proposal would also benefit other local businesses. Furthermore, the addition of overnight guest accommodation would broaden the attraction of the existing golf club. While no accounts or business plan has been provided, I find no reason to disagree with the claim that the proposal would help improve the viability of the golf course business. These economic benefits attract significant weight in favour of the development.

55. However, in terms of supporting a prosperous rural economy, paragraph 88c) of the Framework (formerly paragraph 84c)) only explicitly promotes sustainable rural tourism that respects the character of the countryside. For the reasons already provided, I find the proposal would not represent sustainable development and that it would be detrimental to the countryside. As such, it is not supported by this part of the Framework.

56. Overall, I find the benefits of the proposal would be significant. Nonetheless, they do not provide sufficient justification to allow the proposal contrary to the identified conflict with development plan policies.

Conclusion

57. For the above reasons, I conclude that the appeal should be dismissed.

Jonathan Edwards

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Aida McManus

Christopher Bancroft

David Daniels

FOR THE LOCAL PLANNING AUTHORITY:

Matt Jedruch

Senior Planning Officer

Ben Dutton

Leicestershire County Council Highways

Nigel Wakefield

Managing Director, Node

INTERESTED PERSONS

Chris Allen

Supporter of proposal

Neil Vitale

Appellant

John Nixon

Supporter of proposal

Kenneth Good

Supporter of proposal

LIST OF DOCUMENTS SUBMITTED AT THE HEARING:

1. Application for an award of appeal costs from the appellant marked V1 LPA.
2. Application for an award of appeal costs from the appellant marked V1 LHA.
3. Application for an award of appeal costs from the appellant marked V2 LPA.

4. Application for an award of appeal costs from the appellant marked V2 LHA.
5. Letter dated 31 October 2023 from AM Planning Consultants Limited.
6. Letter dated 22 November 2023 from AM Planning Consultants Limited.