



Appeal Decision

Site visit made on 18 December 2023

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16th January 2024

Appeal Ref: APP/G2435/W/23/3325643

Land between 46 and 54 Bondgate, Castle Donington, Leicestershire DE74 2NR

- 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 Mrs C Wilson against the decision of North West Leicestershire District Council.
 - The application Ref 22/00324/FUL, dated 18 February 2022, was refused by notice dated 31 March 2023.
 - The development proposed is the erection of 2 dwellings.
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Decision

1. The appeal is allowed, and planning permission is granted for the erection of 2 dwellings at land between 46 and 54 Bondgate, Castle Donington DE74 2NR in accordance with the terms of the application, Ref 22/00324/FUL, dated 18 February 2022, and the plans submitted with it, subject to the conditions within the attached schedule.

Preliminary Matters

2. A revised version of the National Planning Policy Framework (The Framework) was published with immediate effect on 19 December 2023. Policies within the revised Framework are material considerations which should be taken into account in decision making. Main parties have been given an opportunity to comment on the new Framework and I have taken into account any subsequent comments received in arriving at my decision.

Main Issue

3. The main issue is the effect of the proposed dwellings on the living conditions of existing, and future occupiers of the site, with particular regard to air quality.

Reasons

4. The Environment Act 1995 requires local authorities to review air quality in their area and designate air quality management areas (AQMA) if improvements are necessary. Where an AQMA is designated, local authorities are also required to work towards objectives prescribed in regulations for that purpose. An air quality action plan, describing the pollution reduction measures, must then be put in place. Associated regulation, based on legislative requirements, requires that nitrogen dioxide (NO₂) levels, caused largely by traffic emissions, should not exceed 40µg/m³ as an annual mean measure. The site is within the Castle Donington AQMA. The area has been

declared as an AQMA to reduce concentrations of air pollutants and the public's exposure to air pollution.

5. Policy En6 of the North West Leicestershire Local Plan [2021] (LP) relates to land and air quality. This states that proposals for development on land that is subject to an Air Quality Management Area will be supported where a) it is subject to detailed investigation and assessment and b) that appropriate mitigation avoids any adverse impacts.
6. The Council's assessment of air quality in September 2007 found that Bondgate received a NO₂ annual mean pollution levels of 33µg/m³ in 2006. Nonetheless, the Air Quality Action Plan (AQAP) undertook monitoring in 2019 and found that the wider area contained a clear exceedance of the annual mean NO₂ air quality objective. Accordingly, the 2021 AQAP proposed a series of measures to address NO₂ exceedance in the AQMA. These included the provision of the Castle Donington Relief Road and other related traffic management measures. I understand that the relief road has been implemented. As such, local road improvements would reduce traffic using Bondgate and the associated recorded emissions.
7. The Appellant identifies that baseline data has been collected from two nearby diffusion tubes, sites 18N and 19N, both along Bondgate. These are used to collect NO₂ data from passive sampling. These have collected data over the last two years (2021 and 2022). The findings demonstrate that NO₂ levels were 29.8 µg/m³ and 34.2 µg/m³ (at 18N) and 19.7 µg/m³ and 19.4 µg/m³ (at 19N) as annual mean results for those years. These therefore fall below the air quality requirements of regulation.
8. Consequently, based on the monitored air quality data, receptors at the site would be unlikely to suffer NO₂ levels in exceedance of the air quality regulations. Furthermore, the site is within a large settlement providing future occupiers with good access to a range of goods and services by a variety of travel modes. This consideration, combined with the small size of the scheme means that the anticipated number of trips generated by motor vehicles would be moderate.
9. As such, the proposal would have a negligible impact on concentrations of NO₂ at the site and would be within a part of the AQMA shown to include only moderate levels of pollution. Accordingly, based on the evidence before me, I am satisfied that the proposal would not result in future occupiers, or the public's, exposure to pollutant concentrations that exceed national air quality objectives through the operation of the proposed development.
10. Accordingly, the proposal would not undermine the Council's air quality objectives or materially harm the living conditions of future or existing occupiers with regard to air quality considerations and would not generate the need for mitigation. As such, the proposed dwellings would accord with LP policies En6 and D2 and the Framework. These seek, *inter alia*, for development to not have a significant adverse effect on the living conditions of existing and future residents and for new development within AQMAs to be consistent with the air quality action plan.

Other Matters

11. The appeal site is within the Castle Donington Conservation Area (CA), which includes many Georgian and late Victorian buildings. Buildings along Bondgate are generally two-storey and consist of a range of styles, largely of traditional form, in a mostly back of pavement location that climb the hill. The significance of the CA appears to derive from its quantity of historic buildings and its medieval origins. The site presents a gap in an otherwise largely continuous frontage. This gap is out of character with the streetscene and presents an unusual void in build form. The proposed dwellings would mostly infill this gap and therefore align with the prevailing pattern of development and complement neighbouring development in form, style and use of material. Consequently, the simple, traditional design of the proposal would integrate well with its surroundings and thus preserve the character and appearance of the CA.
12. The site is also within the setting of the Grade II listed building of 59 and 61 Bondgate. The listed building, which is opposite the site, consists of a late C16 building and a C19 extension. The earlier section has a timber frame construction with colour washed brick and render infill. The extension is of colour washed brick with a hipped slate roof. Its significance derives from its origins, historic interest, and traditional form in a high street location. Although within the setting of the listed building, the proposal would reinforce the back of footway character of the street, with a pair of buildings that would complement their surroundings without dominating the site with obtrusive development. Thus, the proposal would preserve the significance of the listed building.
13. I acknowledge the concerns raised by interested parties that the proposal would increase traffic and result in detriment of highway and pedestrian safety. Nonetheless, the proposed parking would include the ability to turn on site, enabling vehicles to enter and exit the site in a forward gear. Moreover, the addition of five additional vehicles on the local highway would have a negligible impact on local traffic levels. Furthermore, the submission demonstrates that suitable visibility splays can be provided at the access to ensure clear visibility can be provided. As a result, the scheme would not result in harm to pedestrian or highway safety, a conclusion also found by the Highway Authority.
14. An adjacent residential occupier has raised privacy concerns with respect to overlooking. However, the only side windows at first floor serve bathrooms, these could be required to be obscurely glazed to prevent a loss of privacy to neighbouring occupiers.
15. Matters of possible structural damage, following land levelling, has been raised by the occupier of an adjacent dwelling. However, the physical effects of construction on neighbouring landowners is a matter covered by Building Regulation approval and would be a civil matter outside the consideration of this appeal.

Conditions

16. I have considered the use of conditions in line with the guidance set out in the Government's Planning Practice Guidance (PPG). No conditions have been suggested by the Council. Nonetheless, I have deemed it to be necessary to attach several conditions.

17. I have imposed the standard conditions with respect to timeframe and approved plans as advised by the PPG for clarity and certainty [conditions 1 and 2]. Conditions are necessary for materials to be agreed with the Council prior to use in the interests of the character and appearance of the area [3]. It is also necessary for a condition to be imposed to require the side windows to be obscurely glazed to prevent overlooking towards neighbouring properties [8].
18. The Highway Authority has recommended the addition of conditions to secure an appropriate pedestrian visibility splay, vehicle visibility splays, details of access width and the provision of the proposed parking area. These conditions would be reasonable and necessary in the interests of highway safety [4, 5, 6, and 7].

Planning balance and conclusion

19. The Framework seeks to boost the supply of housing. The proposal is within a large settlement, enabling good access to goods and services in an accessible location. The proposed scheme would make efficient use of land and would complement the character and appearance of the area. Moreover, the scheme would comply with the Council's policies that seek to ensure development would not contribute to adverse air quality. This scheme could be delivered relatively quickly, making a rapid positive contribution to the local supply of housing in the area.
20. For the reasons given above, the proposal would comply with the development plan as a whole and there are no material considerations, including the Framework, that would outweigh that conflict. Therefore, the appeal is allowed subject to the attached conditions.

Ben Plenty

INSPECTOR

Schedule of conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan 0370-1-01-00, Site Plan 0370-1-02-00 rev A, Site Layout Plan 0370-3-08-01 rev D, Ground Floor Plan 0370-3-11-00 rev B, First Floor Plan 0370-11-01 rev B, Roof Plan 0370-3-11-02 rev C, Elevations (A and B) 0370-3-21-00 rev D and Elevations (C and D) 0370-3-21-01 rev B.
- 3) No development of a buildings shall take place until a sample panel of the materials to be used in the construction of the external surfaces shall have been prepared on site for inspection and approved in writing by the local planning authority. The sample panel shall be at least 1 metre x 1 metre and show the proposed material, bond, pointing technique and palette of materials (including roofing, cladding and render) to be used in the development. The development shall be constructed in accordance with the approved sample, which shall not be removed from the site until completion of the development.
- 4) No part of the development hereby permitted shall be occupied until such time as 1.0 metre by 1.0 metre pedestrian visibility splays have been provided on the highway boundary on both sides of the access with nothing within those splays higher than 0.6 metres above the level of the adjacent footway/verge/highway and, once provided, shall be so maintained in perpetuity.
- 5) No part of the development hereby permitted shall be occupied until such time as vehicular visibility splays of 2.4 metres by 43 metres have been provided at the site access. These shall thereafter be permanently maintained with nothing within those splays higher than 0.6 metres above the level of the adjacent footway/verge/highway.
- 6) Notwithstanding the submitted plans, the proposed access shall have a width of a minimum of 4.25 metres, a gradient of no more than 1:20 for a distance of at least 5 metres behind the highway boundary and shall be surfaced in a bound material with a 7.3m dropped crossing. The access once provided shall be so maintained at all times.
- 7) The development hereby permitted shall not be occupied until such time as the parking and turning facilities have been implemented in accordance with Indigo Architecture drawing number 0370-3-08-01 Revision D. Thereafter the onsite parking provision shall be so maintained in perpetuity.
- 8) The first-floor side facing windows of the approved dwellings shall be obscurely glazed to Pilkington Level 4 (or equivalent) and non-opening to 1.7m above the finished floor level and shall be retained as such for the lifetime of the development.

End of conditions