



Appeal Decision

Site visit made on 19 December 2023

by M Russell BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 January 2024

Appeal Ref: APP/M1005/W/23/3324628

Land east of Moorwood Moor Lane and north of Inns Lane,

Moorwood Moor, South Wingfield DE55 6DU

Easting (x) 436373 Northing (y) 356224

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for planning permission.
 - The appeal is made by Mr William Huckle against Amber Valley Borough Council.
 - The application Ref AVA/2023/0132, is dated 20 February 2023.
 - The development proposed is construction of a new means of access from Inns Lane.
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Decision

1. The appeal is allowed and planning permission is granted for construction of a new means of access from Inns Lane at Land east of Moorwood Moor Lane and north of Inns Lane, Moorwood Moor, South Wingfield DE55 6DU Easting (x) 436373 Northing (y) 356224 in accordance with the terms of the application, Ref AVA/2023/0132, dated 28 February 2023, subject to the following conditions:
 - (1) The development hereby permitted shall be in accordance with the following approved plans: Drawing nos D5500-001 (Location Plan – revised version submitted to the LPA on 27 March 2023) and D5500-4PD-001 Rev A (Proposed Site Access Arrangement).
 - (2) Before any surfacing materials beyond those already in situ at the date of this decision are placed on the access hereby approved, precise details of the type, distribution and finished level of the surfacing materials shall be first agreed in writing with the Local Planning Authority. Once agreed in writing, any subsequent works to place surfacing materials on the access shall be in full accordance with the approved details.
 - (3) Any works to the access hereby approved shall only be carried out in full accordance with 'Figure 5 – Arboricultural Method Statement' within the Arboricultural Report, Impact Assessment and Method Statement (April 2023).

Applications for costs

2. An application for costs was made by Mr William Huckle against Amber Valley Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The appeal is against the Local Planning Authority's (LPA's) failure to determine the planning application within the relevant statutory period. The LPA has provided a draft decision notice which sets out the reasons on which it would have refused the proposal had it determined the application. I have had regard to these reasons in defining the main issues.
4. I have taken the address from the Planning Application forms but included the grid references provided on the appeal forms which accurately pinpoint a position on the proposed access. I have also added the postcode provided on the LPA's appeal questionnaire.
5. Following submission of the appeal, the revised National Planning Policy Framework (the Framework) was published on 19 December 2023 and updated on 20 December 2023. The parts of the Framework most relevant to the appeal have not substantively changed from the previous version. Consequently, this update to national policy does not fundamentally alter the main parties' cases or prejudice their position at appeal, and it is not necessary to seek further comments.
6. An access track laid out as per the proposed drawings is already in situ with a central grass verge. At the time of my visit, some crushed stone material was present along the access although not to the extent illustrated on the proposed plans. In any case, given the extent of the works already undertaken, I have determined the appeal on the basis that planning permission is sought at least on a partial retrospective basis.

Main Issues

7. The main issues are whether the appeal site is an appropriate location for the development including the effect of the development on the character and appearance of the area.

Reasons

8. There is no dispute between the main parties that the site is in the countryside for planning purposes. Saved policy EN1 of the Amber Valley Borough Local Plan (2006) (LP) states that in the countryside, outside the built framework of settlements, new development will only be permitted where it meets one of three specific criteria, namely, (a) is essential in conjunction with the requirements of agriculture or forestry, (b) is necessary within the countryside and cannot be reasonably located within an existing settlement, or (c) will improve the viability, accessibility or community value of existing services and facilities in settlements remote from service centres provided by the town and larger villages.
9. The appellant suggests the access would also facilitate access to the fields, I saw that access points off Inns Lane and close to the converted barn perform a similar function and access into the fields is not dependant on the development. Therefore, I agree with the LPA that the proposal is not essential for the purposes under criteria (a) of saved policy EN1 nor does the development evidently relate to the matters at criteria (c).
10. The appellant contends that the development meets criteria (b) of Policy EN1. I am mindful that planning permission has previously been granted for the

dwelling that access would serve¹. This established that the dwelling would be accessed from Moorwood Moor Lane. Therefore, the proposal isn't necessary to make the dwelling accessible.

11. However, from what I have seen, the access off Moorwood Moor Lane is shared and crosses third-party land. I also saw for myself that there is restricted visibility where that access adjoins the public highway. The highway authority has previously suggested it is substandard in comments made in relation to a prior approval application at the site². To my mind, for highway safety reasons, the use of a substandard access is not desirable if an alternative safer independent access could be provided. Given the location of the dwelling in the countryside, such an alternative could not be located within an existing settlement. These factors are persuasive in respect of whether the proposal is necessary in the countryside in this instance particularly if it can be accommodated in a way which is sympathetic to the character and appearance of the countryside.
12. Moreover, the Framework is not as prescriptive in terms of the types of development that will be permitted in the countryside and this reduces the weight to which I apply to Saved Policy EN1. Furthermore, Saved Policy EN1 does not consider matters of character and appearance in restricting development in the countryside. Therefore, I attach more weight to the up-to-date requirements in the Framework which at Paragraph 180 seek that development recognises the intrinsic character and beauty of the countryside.
13. The LPA refers to saved Policy LS3 of the LP which requires that development conserves or enhances the quality and local distinctiveness of the natural and built environment. It also requires that development respects the character of the locality including in terms of the scale and nature of the development, its layout, materials and landscaping. These requirements are generally consistent with Paragraph 135 of the Framework which seeks amongst other things that developments add to the overall quality of the area, are visually attractive as a result of good architecture, layout and effective landscaping and are sympathetic to local character.
14. The new access point is taken from a section of Inns Lane which is flanked by grass verges and hedgerows. The predominant land use is agricultural fields with a gently undulating landform. The sparsely built surrounding context, makes for an overtly rural character and is typical of its countryside location.
15. The proposed access is of considerable length. However, it substantively aligns with pre-existing field boundaries and, unlike a building, corresponds with the established ground levels. It is also flanked by post and wire fencing and new hedgerow planting to segregate it from the fields to the east. Consequently, the access drive has a limited effect on rural openness and is not prominent from surrounding vantage points. Even where visible over the hedgeline and from the nearest public right of way, its composition, which includes a central grassed channel, is consistent with access tracks commonly seen in the countryside.
16. A condition could be attached to ensure that if any additional surfacing materials are to be placed along the access, the type, distribution and finished

¹ LPA Ref AVA/2021/0388

² LPA Ref PDR/2019/0030

level of those materials shall be first agreed with the LPA to ensure that levels on the site are not substantively altered and to ensure the composition of the access retains its unmade rural aesthetic.

17. Vehicles using the access and the placement of bins near the access point on Inns Lane would allude to its domestic use. However, the levels of activity associated with the single dwelling it would serve would be minimal and would not have a material effect on the intrinsic character and beauty of the countryside in this instance.
18. Overall, for the site-specific reasons set out, I find that from a locational perspective, the development resonates with saved Policy EN1 (b) of the LP. Moreover, the development has an acceptable effect on the character and appearance of the area and complies with the requirements of saved Policy LS3 of the LP and the up-to-date requirements of the Framework including those relating to development in the countryside. Accordingly, I also find that the development does not conflict with the sustainable development objectives of the Framework.

Other Matters

19. Third-parties have raised concerns in respect of the potential effects of the development on a protected yew tree. The LPA's tree officer raised no concerns in respect of this tree subject to the development being implemented in line with the tree protection and method statement within the appellant's Arboricultural Report, Impact Assessment and Method Statement (April 2023) (ARIAMS). Having read the findings of the ARIAMS, I agree that such a condition would ensure that trees in the vicinity of the access would be adequately protected should any further works take place on the access.
20. No objective evidence is before me to demonstrate that the development would have material effects on biodiversity, drainage or flood risk in the area.
21. My attention has been drawn to a previously refused planning application for the 'widening of existing vehicular access and creation of new access track'³. I have not been provided with full details of that application and have considered the appeal on the basis of the evidence before me which includes that the highway authority has not raised any objections in this instance. From my own observations, I am also satisfied that the access would not have an unacceptable effect on highway safety.

Conditions

22. As the new means of access and hedgerow are already in place, commencement and implementation conditions are not necessary. I have attached an approved drawings condition in the interests of clarity. Given the uncertainty as to whether the access is in its finished state, I have also attached a condition requiring that the type and quantity of any surfacing materials placed on the access shall be first agreed with the LPA. This is necessary to ensure that levels on the site are not substantively altered and to ensure the composition retains an unmade rural aesthetic both in the immediate and longer term.

³ LPA Ref AVA/2019/0644

Conclusion

24. For the reasons set out, the appeal is allowed.

M Russell

INSPECTOR