



Appeal Decision

Site visit made on 12 December 2023

by Benjamin Clarke BA (Hons.) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23rd January 2024

Appeal Ref: APP/A2470/W/23/3325242

Land off Willoughby Drive, Empingham, Oakham, Rutland, LE15 8PY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Mr Andrew Clover against the decision of Rutland County Council.
 - The application Ref 2023/0470/OUT, dated 24 April 2023, was refused by notice dated 26 June 2023.
 - The development proposed is an outline erection of four dwellings.
-

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was submitted by Mr Andrew Clover against Rutland County Council. This is the subject of a separate decision.

Procedural Matter

3. The planning application was submitted in outline, with all matters reserved for future consideration. I have therefore had regard to any details in respect of the reserved matters on an indicative basis only.

Main Issues

4. The main issues relevant to this appeal are:
 - the effect of the proposed development upon the character and appearance of the surrounding area;
 - the effect of the developments upon biodiversity; and
 - whether the proposed development is of an appropriate density and should a financial contribution towards affordable housing be made.

Reasons

Character and appearance

5. The appeal site consists of part of an undeveloped field located adjacent to Empingham. The site is therefore outside of settlement boundaries and in the countryside. A notable feature of the appeal site and some of the adjoining land is that the presence of open land. This means that the appeal site provides the settlement with an open and verdant setting. This also gives the Empingham Conservation Area (the CA) a rural setting.

6. Although the planning application was submitted in outline, with all matters reserved, I have no reason to believe that the final development would not be akin to the maximum parameters suggested in the application. However, even if this were not the case, the proposed development would result in a notable increase in built form, even though the construction period would be relatively short.
7. The proposed development would result in the site having a more urbanised appearance. Although the proposed development would not encompass the entirety of the existing field, it is likely that additional boundary treatment would need to be constructed to subdivide it. This would conflict with the generally open character that is a feature of the existing field.
8. Given the provision of new homes, it is likely that items such as domestic paraphernalia would be placed near to the proposed dwellings. Although these would likely fall outside of the definition of development, they would have a reasonably permanent presence.
9. A defining feature of Empingham has a nucleated form. This means that the built form of the settlement follows a clear pattern. The proposed development would project beyond this pattern. In consequence, the appeal scheme would erode the existing arrangement of built form and the rural setting of the CA. Therefore, the proposed development would be discordant.
10. Turning to visual impacts, these matters are of particular importance given the general prominence of the appeal site. There is a footpath that runs across the appeal site leading from the settlement to the countryside beyond. In result, people using the footpath would readily experience the increased built form and loss of open space.
11. In addition, the proposed development would be perceptible from the nearby roads of Main Street and Mill Lane. Whilst such views would be diffused to a limited extent by the distances involved, the loss of the open and verdant character would be readily experienced by potentially a great number of people.
12. Therefore, the proposed development would be a strident addition to the locality. This would occur even though the proposed development would be viewed against a backdrop of Willoughby Drive with final dwellings appearing comparable to the existing houses elsewhere. This is due to the protrusion of the development into the countryside.
13. Although there is some landscaping within the surrounding area, this is relatively limited and does not provide extensive screening of the appeal site. In addition, much of the landscaping falls outside of the appeal site. The screening effect has the potential to vary depending upon the health of the landscaping.
14. In result, it is possible that the development could become more prominent over time. Therefore, its presence would not mitigate my proceeding concerns.
15. Given the current undeveloped nature of the appeal site, its prominence and the nature of receptors that would experience the proposed development, the appeal site is on land that is of a greater sensitivity to change. Given the substantial changes that would occur in result of the proposed development, its

scale and permeance, the development would give rise to a significant adverse effect upon the character of the area.

16. I therefore conclude that the proposed development would have an adverse effect upon the character and appearance of the surrounding area. The development, in this regard, would conflict with Policies CS4, CS19 and CS22 of the Rutland Core Strategy (2011) (the Core Strategy) and Policies SP6, SP15 and SP20 of the Site Allocations and Policies Development Plan Document (2014) (the Development Plan).
17. Amongst other matters, these seek to ensure that proposals contribute towards the delivery of sustainable development; contribute positively to local distinctiveness; be appropriate to the landscape character; not adversely affect the character and landscape of the area; be of a good design; and protect and, where possible, enhance historic assets and their settings,

Biodiversity

18. The appeal site consists of an undeveloped grass field. The appeal site is also near to other undeveloped areas of land. The boundaries of the appeal site feature some trees and elements of hedges.
19. The proposal would create an increase in the overall level of built form and result in a diminished level of grassland. This proposed site is also likely to feature an access being installed from Willoughby Drive, which would necessitate a reduction in the overall level of hedges.
20. In considering this appeal I have been directed towards policies that seek to ensure that new developments deliver improvements to biodiversity. However, the policy does not currently specify a minimum threshold figure.
21. This means that the proposed development would need to overcome the loss of grassland and, potentially, a section of hedge and deliver improvements upon the existing level.
22. The appeal documentation includes surveys into the presence of biodiversity at the appeal site and explores how an enhancement could be delivered on the appeal site. Although there is some debate regarding the timing of the submitted assessment, it is clear from the submissions that there are no irreplaceable habitats on the site.
23. It has also been demonstrated that it would be possible to deliver improvements to the biodiversity on the appeal site. This would include additional hedges. It would be possible to plant hedges of such a type that would serve as new habitats and encourage biodiversity improvements.
24. Furthermore, had I been minded to allow this appeal, I could have imposed planning conditions that would secure the delivery of such improvements, in addition to agreeing a plan that would secure a programme of ongoing maintenance. This would provide some certainty that the proposed development would provide the necessary biodiversity improvements and that these would be retained throughout the life of the development.
25. I therefore conclude that the proposed developments would not have an adverse effect on biodiversity. The development, in this regard, would conform with the requirements of Policy CS21 of the Core Strategy; and Policy SP19 of

the Development Plan. Amongst other matters, these seek to ensure that the quality and diversity of the natural environment of Rutland is conserved and enhanced; and maintain, protect and enhance biodiversity.

Density and affordable housing

26. The planning application was submitted in outline, with all matters reserved. The details specify that a maximum of four dwellings would be constructed on the appeal site. I have no reason to believe that the final development that would not be at the maximum specified threshold.
27. The council has raised concerns regarding the number of houses that have been proposed. In considering this appeal, I have been directed towards Policy CS10 of the Core Strategy, which amongst other matters seeks to deliver a minimum density. The proposed development would not deliver this level of density, even if all four dwellings were to be delivered.
28. However, the adopted planning policy to which I have been directed is clear that, amongst other criteria, compliance with Policy CS19 of the Core Strategy should also be achieved. Amongst other points, Policy CS19 requires that developments are appropriate and sympathetic to its setting in terms of scale.
29. In this case, I have found that the development of up to four dwellings would lead to an adverse effect upon the character and appearance of the surrounding area. A larger number of dwellings is also likely to be associated with greater amounts of hardstanding and boundary treatments.
30. Therefore, it is likely that the delivery of a development of a greater level of density would also lead to an erosion of the character and appearance of the surrounding area. If this scenario were to occur, it would represent a conflict of Policy CS19. This means that a greater number of dwellings would also lead to a breach of Policy CS10.
31. In addition, the evidence before me indicates that there are a number of constraints on the appeal site such as planting and the need to provide infrastructure to serve the proposed houses, which would reduce the overall amount of space available for the erection of new dwellings.
32. Although there is some debate regarding the extent of these constraints, they also serve to reduce the amount of dwellings that could be accommodated on the site, which would also reduce the density of any development on this site.
33. In result of this, it appears reasonable that the appeal site cannot accommodate a greater number of houses than the maximum threshold within the appeal proposal. Therefore, I am unable to conclude that the development represents an under delivery of housing on this site.
34. Owing to this conclusion, I am unable to find that the development should make a financial contribution towards the provision of off-site affordable housing. This is because the appeal site is unlikely to support the numbers of houses necessary in order to require the payment of such a contribution.
35. I therefore conclude that the proposed development is of an acceptable density and that there would not need to be a financial contribution towards the provision of off-site affordable housing. The development, in this regard, would comply with the requirements of Policy CS10 of the Core Strategy and Policy

SP9 of the Development Plan. Amongst other matters, these seek to ensure that under development of sites is avoided; and that an appropriate housing density is delivered, subject to complying with other policies.

Other Matters

36. There is some debate as to whether the Council can demonstrate a five-year housing land supply. However, if I were to conclude that there was not such a supply, the provisions of Paragraph 11(d) of the National Planning Policy Framework (the Framework) would apply. Amongst other matters, this states that planning permission should be granted for a development, unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework taken as a whole. This is often referred to as the 'tilted balance'.
37. In this case, the benefits to the local housing supply are relatively small given the fact that the proposed development would deliver a maximum of four new dwellings. This means that the benefits of the scheme can only be given a limited amount of weight.
38. The development would result in the delivery of biodiversity improvements. However, owing to the size of the appeal site, any new habitats created through these improvements would not be of a significant scale. Therefore, this carries a limited amount of weight.
39. The proposed development would generate economic activity. This would arise from the construction of the new development, in addition to usage of businesses and services in the surrounding area by occupiers of the proposed development.
40. However, those benefits arising from the construction process would be relatively time-limited and would, potentially, not be local in impact. In addition, the scale of the development is unlikely to result in significant support of local businesses and services. This means that the economic benefits can be only given a limited amount of weight.
41. Conversely, the proposed development would generate significant harm arising from the erosion of the character and appearance of the surrounding area. This matter carries a large amount of weight.
42. Therefore, the adverse effects arising from the proposed development would significantly and demonstrably outweigh the benefits and, in consequence, the appeal should be determined in accordance with the provisions of the development plan.
43. Furthermore, given that the adverse effects of the proposed development significantly and demonstrably outweigh the benefits of granting permission means that the concerns regarding the delivery of new housing in the locality does not overcome my findings in respect of the first main issue.
44. I understand that, in submitting the planning application, the appellant was attempting to overcome concerns raised in respect of a previous proposal. However, this does not address the adverse effects that would arise in respect of character and appearance.

45. The proposed development is unlikely to have an adverse effect upon highway safety or flood risk. Whilst these are matters of note, they do not overcome my findings in respect of this appeal.
46. My attention has been drawn to proposals elsewhere. I do not have the full information regarding the planning circumstances of these, which means that I can only give them a limited amount of weight. Nonetheless, these developments are in different locations to the appeal site. Therefore, the other developments have contrasting relationships with their surroundings. This means that a different outcome is justified in respect of the appeal scheme before me.

Conclusion

47. 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