



Appeal Decision

Site visit made on 31 October 2023

by L C Hughes BA (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 February 2024

Appeal Ref: APP/W3005/W/23/3320079

Plot adjacent to 99 Wild Hill, Teversal, Sutton in Ashfield NG17 3JE

- 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 Ms Caroline Maddox against the decision of Ashfield District Council.
 - The application Ref V/2022/0002, dated 6 January 2022, was refused by notice dated 8 February 2023.
 - The development proposed is erection of 2 new two-storey dwellings with single garage and 2 parking bays.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for the full amount of costs has been made by Ashfield District Council against Ms Caroline Maddox, and an application for the full amount of costs has been made by Ms Caroline Maddox against Ashfield District Council. These are the subject of separate decisions.

Preliminary Matters

3. The address of the appeal site on the application form was given as plot adjacent to 91 Wild Hill. However, the Council's reason for refusal, the appeal form and the site location plan indicate that the correct address is plot adjacent to 99 Wild Hill. I have therefore used this address on the banner heading above, and determined the appeal accordingly.
4. Due to a bereavement, the appellant was granted a short extension of time to submit their final comments relating to the appeal. Whilst these comments were received outside of the timetable outlined in the Procedural Guide, I consider that parties' interests would not be prejudiced as a result of me taking them into account.
5. The Government published a revised National Planning Policy Framework (the Framework) on 19 December 2023, later updated on 20 December 2023. The main parties have been given the opportunity to comment on this version and in reaching my decision I have taken account of comments that were received.

Main Issues

6. The main issues are:
 - a) the effect of the proposed development on ecology; and
 - b) the effect of the proposed development on trees and woodlands.

Reasons

Ecology

7. The appeal site is situated along the B6014 and lies within a gap in a built up frontage, with residential properties to either side. In planning terms, the site falls within the open countryside. Within the site are trees, mature boundary hedgerows and semi-improved grassland. The appellant submitted a Preliminary Ecological Appraisal (PEA) incorporating a Phase 1 Habitat Survey and Protected Species Assessment to accompany their application, to establish the likelihood of the site supporting protected species.
8. The PEA identifies habitats which have the potential to support protected and/or notable species, and is clear that further survey work should be completed prior to the determination of the planning application. This includes Habitat Suitability Index Assessments to clarify the value of the habitats for great crested newts, which are a European Protected Species (EPS), and to establish the extent of the great crested newt population before assessing the impact of the development.
9. Under the provisions of the Conservation of Habitats and Species Regulations 2017 (as amended) I am required to consider whether any EPS, such as great crested newts, would be affected by the proposed development. Also, I am required to consider whether any measures would be effective in mitigating any harm.
10. The survey cannot be secured by planning conditions, as this approach would not comply with guidance set out within the ODPM Circular 06/2005¹. Paragraph 99 of this circular explains that it is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision. The need to ensure that ecological surveys are carried out should only be left to coverage under planning conditions in exceptional circumstances. No such circumstances have been demonstrated in this case and it is therefore a reasonable expectation that the survey be carried out prior to any grant of planning permission.
11. Without the survey being carried out, I am unable to make an informed decision about the effect of the proposal on protected species, including assessing whether any mitigation measures would adequately safeguard or compensate for any harm caused to great crested newts by the proposal.
12. Additionally the PEA highlights that reptile surveys should be undertaken to establish whether reptiles are present on the site. Again, the PEA is clear that this survey work should be completed prior to determination of the planning application.
13. My attention has been drawn to two recent decisions for dwellings in the district that did not require a PEA². However, I note that these sites are not directly comparable. For example, the sites are smaller than the appeal site and fall within the urban area. There will be many instances where a PEA is not required, depending on location and site-specific circumstances. I have

¹ Biodiversity and Geological Conservation – Statutory obligations and their impact within the planning system

² V/2022/0267 and V/2022/0281

determined this appeal on its own merits on the evidence before me, and taking the specifics of the site into account.

14. A previous application by the appellant for four dwellings on the appeal site was made in 2021, but later withdrawn. Nottinghamshire Wildlife Trust (NWT) had requested that an ecological desktop assessment and Phase-1 Habitat Survey was undertaken for the 2021 scheme, and that if the Phase-1 Survey identified potential impacts on protected species, then more detailed surveys would be required. The proposed development is for a smaller number of dwellings and must be judged on its own merits. However, the NWT highlighted that given the habitats on and adjacent to the appeal site, the potential presence of protected and priority species could not be ruled out. It is reasonable to assume that potential ecological impacts from residential development could occur regardless of the quantum of development. In my view it was appropriate for the Council to request a PEA for the appeal scheme to assess any potential ecological impacts of development.
15. I conclude that insufficient evidence has been provided to demonstrate that the proposal would not have an adverse impact on ecology. The proposal would therefore be in conflict with Policy ST1 of the Ashfield Local Plan Review (2002) (LP) which seeks to ensure that development will not adversely affect the character and quality of the environment, and the Framework which seeks to ensure that development conserves and enhances the natural environment.

Trees and woodlands

16. The appeal site is bound by extensive vegetation, which makes a positive contribution to the character and appearance of the area. Policy EV8 of the LP and its supporting text highlight that development will not be permitted which adversely affects trees worthy of retention, and that where possible hedgerows should be incorporated into open space and landscaping proposals of new development.
17. The appellant submitted a short tree protection plan and report to accompany their planning application. However, the Council have concerns regarding the thoroughness of this document and its compliance with BS5837:2012³, which details the steps that should be taken to ensure that trees are appropriately and successfully retained when a development takes place. I share these concerns.
18. The tree report lacks detail. The trees have not been classified, and there is no indication of their height, branch spread, condition, or how the trees' root protection areas (RPA) have been calculated, including one of the trees which is close to the proposed access point. It is not clear whether the foundations of the proposal or the building activities relating to it would damage the trees' root systems. The absence of detailed information does not allow me to carry out a balanced assessment of the likely impacts of the proposed development on the RPA and thus the likelihood of the trees' long-term survival.
19. The tree report states that there are two trees on the site, on the northern site boundary. However, the PEA indicates that there are other mature trees at the southwest corner of the site, which are not mentioned in the tree report.

³ Trees in relation to design, demolition and construction – Recommendations

20. Without a thorough aboricultural assessment it is therefore not possible to determine whether the health and appearance of trees could be adversely affected by the proposals, whether any such harm could be mitigated, or whether development would constrain the RPA of the trees. It is also not possible to ascertain whether an acceptable relationship between the trees and the development could be achieved and sustained.
21. The PEA states that hedgerows line the north, east and western boundaries. and that the design proposals indicate all three hedgerows will be retained and managed post development. This is at odds with the tree report which indicates that hedgerows align all the boundaries and states that hedgerows which line the eastern and southern boundary of the site will be removed. Little evidence has been supplied as to why the hedgerows need to be removed. There has been no evidence supplied detailing mitigation measures, and it is therefore not possible to assess whether any harm caused by the loss of hedgerows could be mitigated.
22. My attention has been drawn to examples of developments whereby the local planning authority have applied planning conditions to control tree and hedgerow protection. However, the characteristics of each site are different, and I have assessed this appeal on its site-specific circumstances and with regard to the evidence before me. Whilst I have, therefore, considered the use of a condition to request further assessment of the site's trees and hedgerows, given the degree of uncertainty as to whether the details submitted pursuant to such a condition could lead to the proposed development being unimplementable or mitigation measures unfeasible, the use of a condition would not be reasonable in this case.
23. In the absence of sufficient information to the contrary, I am unable to conclude that the proposal could be accommodated without causing harm to trees and woodlands, and whether any harm identified could be mitigated. It would therefore not comply with Policy EV8 of the LP which stresses that development which adversely affects trees worthy of retention will not be permitted. The proposal would also be in conflict with the Framework, which seeks the retention of trees wherever possible.

Other Matters

24. I acknowledge that the site has been vacant for a number of years. The proposal would constitute infill development, continuing the linear ribbon of development along Wild Hill, and would not adversely affect the character or openness of the countryside. The proposal would not have a negative visual effect or negatively impact the living conditions of neighbouring residents and the proposal would provide adequate parking and access. However, none of these matters outweigh or alter my overall concerns regarding the potential effect of the proposal on ecology and trees.
25. Interested parties have raised a number of concerns regarding the proposal, but as I have dismissed the scheme, I have not considered these matters any further.
26. I note that the appellant is aggrieved with the Council's handling of their application. However, this matter is not determinative in my consideration of the appeal, which I have judged solely on its planning merits.

Planning Balance

27. The Council concedes that it cannot demonstrate a five-year supply of deliverable housing. Its published 2.84 year supply in the Housing Land Monitoring Report 2023 represents a considerable shortfall. The relevant policies of the development plan are therefore deemed to be out of date. In light of Paragraph 11 d) ii) of the Framework, planning permission should be granted 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.
28. I have identified conflict with Policies ST1 and EV8 of the LP. Each is consistent with the Framework in so far as it promotes that planning decisions conserve and enhance the natural environment. As such, I apportion significant weight to these identified policy conflicts and to the associated harm that would be caused to ecology, trees and woodlands.
29. Turning to the scheme's benefits, the Government is seeking to significantly boost the supply of housing. The Framework encourages and supports the effective and efficient use of land and recognises that small sites can make an important contribution to the Council's housing supply. Although the proposed development is for just two dwellings, this would contribute positively to the Council's housing land supply, providing two much-needed dwellings in the context of a significant housing supply shortfall.
30. Indeed, the proposed development would provide social benefits in terms of two new houses with good living space and amenity space provision. Furthermore, the development would generate economic activity during the construction of the houses and provide homes to residents who would contribute to the local economy and support local facilities and services. These are all positive benefits which weigh in favour of granting planning permission.
31. However, in the absence of adequate Ecological and Arboricultural reports, it is not possible to wholly assess the impact of the development on ecology, trees and woodlands. This is the overriding consideration in this case. With this in mind, I attach moderate weight to the appeal scheme's benefits. The adverse impacts of granting planning permission would, in this particular case, significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework taken as a whole. The presumption in favour of sustainable development outlined at Framework paragraph 11 does not, therefore, apply.

Conclusion

32. The proposal would conflict with the development plan when taken as a whole and there are no material considerations, including the Framework, which would indicate a decision other than in accordance with the development plan.
33. For the reasons given above the appeal is dismissed.

L C Hughes

INSPECTOR