
Appeal Decision

Site visit made on 16 January 2024

by A Berry MTCP (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23 February 2024

Appeal Ref: APP/W3005/W/23/3327714

**Land adjacent 113 Beck Lane, Sutton in Ashfield, Nottinghamshire
NG17 3AH**

- 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 K Smith against the decision of Ashfield District Council.
 - The application Ref V/2023/0054, dated 23 January 2023, was refused by notice dated 13 June 2023.
 - The development proposed is described as "the erection of up to 9no dwellings with associated new private access (means of access submitted, all other matters reserved)".
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Decision

1. The appeal is allowed and planning permission is granted for the erection of up to 9no dwellings with associated new private access (means of access submitted, all other matters reserved) at land adjacent 113 Beck Lane, Sutton in Ashfield, Nottinghamshire NG17 3AH in accordance with the terms of the application, Ref V/2023/0054, dated 23 January 2023, subject to the conditions in the schedule to this decision below.

Procedural Matters

2. Outline planning permission is sought with all matters reserved for subsequent approval except access. A drawing has been submitted that includes details of layout, a matter that is reserved for future consideration. I have therefore treated the drawing as illustrative in this regard and determined the appeal on this basis.
3. The description of development in the banner heading above has been taken from the planning application form. However, I have excluded reference to the outline planning application as this is not development.
4. The appellant has submitted a Tree Survey¹ ('the Tree Survey') to address the Council's second reason for refusal. The Council and interested parties had the opportunity to comment upon the document and therefore have not been prejudiced. I have therefore determined the appeal on this basis.
5. Since the appeal was lodged, a revised National Planning Policy Framework ('the Framework') has been published. This has not raised any new matters which are determinative to the outcome of this appeal.

¹ Tree Survey for Land adjacent 113 Beck Lane, Sutton-in-Ashfield, dated 23 June 2023, produced by AT2 Tree Surveys

6. The 2022 Housing Delivery Test results ('the HDT') were published on 19 December 2023 which indicated that the Council has been underperforming over the previous three years. However, the Council's position has not changed since the 2021 results and therefore, it does not raise any new matters which I need to seek the views of the main parties.

Main Issues

7. The main issues are:
- a) whether the appeal site is in an acceptable location for the proposed development, including the effect of the proposed development on the character and appearance of the surrounding area; and
 - b) the effect of the proposed development on existing trees and hedgerows.

Reasons

Acceptable Location? Character and Appearance

8. The appeal site comprises an almost rectangular parcel of undeveloped and largely level land that, at the time of my site visit, was significantly overgrown with evidence of fly-tipping. The site fronts onto Beck Lane, a busy A-road, and has a lower ground level than the adjacent road. Agricultural fields are located to the west of the appeal site and on the opposite side of Beck Lane. A Public Right of Way ('PRoW') traverses the field to the west. At the time of my site visit, the appeal site's appearance was markedly different from the agricultural field to the west.
9. The appeal site is in the countryside. Policy ST1(a) and (b) of the Ashfield Local Plan Review, adopted 2002 ('the LP') states that development will be permitted where it will not conflict with other policies in this LP, and it will not adversely affect the character, quality, amenity or safety of the environment. LP Policy ST4 states that outside the main urban areas and named settlements, permission will only be given for sites allocated for development, or development appropriate to the Green Belt or the countryside as set out in Policies EV1 and EV2 of the LP. LP Policy EV2 details a closed list of developments for which planning permission will be granted in the countryside. This includes *(g) infill development which does not have an adverse effect on the scale and character of the area*.
10. The supporting text to LP Policy EV2 states that *infill will normally comprise one or two dwellings in a small gap in existing development*. The appeal site is located between a row of semi-detached, two-storey dwellings to the north and a large-scale housing development for 322 dwellings² currently under construction to the south ('the housing development'). I appreciate that the proposal is for up to nine dwellings and therefore it would likely exceed the 'one or two dwellings' described within the supporting text to LP Policy EV2. However, I also note that it is prefixed with '*will normally comprise*' and therefore it does not prohibit an infill site from containing a greater number of dwellings or from comprising a larger gap. Consequently, I find that the proposal would infill a gap in an otherwise built-up frontage to Beck Lane.

² Allowed on Appeal. Ref APP/W3005/W/18/3213342

11. The proposal would be well related to the residential developments to either side of the appeal site. While I accept that it would extend beyond the rear boundaries of the linear pattern of semi-detached dwellings to the north, it would not extend as far as the adjacent housing development to the south. Furthermore, the indicative drawing illustrates that a low-density layout could be achieved. Therefore, the proposal would create a staggered transition between the two developments.
12. When travelling along Beck Lane, the proposed development would be viewed against the backdrop of the residential developments to either side. Similarly, when viewed from the PRoW, the proposal would be viewed against the backdrop of the housing development and would appear as an extension to this development. Consequently, even with the presence of the existing vegetation along the site's boundaries, the proposal would be viewed as a cohesive part of the built form along this part of Beck Lane. Additionally, it would not appear visually prominent, and it would not unacceptably intrude into the countryside.
13. The landscape surrounding the appeal site has significantly altered since the start of the adjacent housing development's construction, resulting in this side of Beck Lane having a suburban rather than rural character and appearance. Therefore, the appeal site relates more to the built-up area of Skegby than the adjacent agricultural fields. Consequently, the infilling of the gap between the two areas of residential development would not adversely affect the agrarian character of the area or its openness.
14. I have been directed to an appeal that was dismissed for three dwellings³. Other than the appeal decision letter, I have not been provided with any further details. The site address is described as "*land to the rear of 113 Beck Lane*" and the Inspector states that the site is "*around 130m back from the Mansfield to Sutton in Ashfield Road*". Therefore, the site appears to differ from the appeal site before me. Furthermore, while the adjacent housing development had been allowed at the time the Inspector issued their decision, their decision states that they were not provided with details of the applications to enable them to assess their effect on the proposal. Additionally, the Inspector describes the area surrounding the appeal site as "*within an area of agricultural fields*". Accordingly, there has been a significant material change in circumstance since the appeal was dismissed. Due to their age, this would also apply to the examples of previous refusals/appeal dismissals listed within the planning history section of the Council's officer report.
15. In reference to the first main issue, the appeal site is in an acceptable location for the proposed development and it would not adversely affect the character and appearance of the surrounding area. It would therefore comply with Policies EV2, ST1, ST4 of the LP, the content of which is described above. It would also comply with Policy NP1(3)(c) of the Teversal, Stanton Hill and Skegby Neighbourhood Plan 2016-2031 which seeks to ensure that developments respect the existing landscape character, and Chapter 15 of the Framework that seeks to conserve and enhance the natural environment.

Trees and Hedgerows

16. The Tree Survey identifies that the trees and the mixed hedge within and on the boundaries of the site are Category C (mature and semi-mature) and in

³ Appeal Ref APP/W3005/W/20/3244770

good to fair condition. Category C is defined as '*low quality with an estimated remaining life expectancy of at least 10 years or young trees with a stem diameter below 150mm*' and are '*unremarkable of very limited merit or such impaired condition that they do not qualify in higher categories*'. The trees and hedgerows have a remaining contribution of 10+ years, and from my observations on site, I would concur that they are unremarkable and of very limited merit. Due to the trees' category, they would not be suitable for a Tree Preservation Order.

17. Notwithstanding these findings, the indicative layout drawing demonstrates that nine dwellings could be accommodated within the appeal site while maintaining a degree of separation to the site's boundaries where the existing trees and hedgerows are located. Consequently, a scheme for up to nine dwellings could be designed that would not adversely affect the existing trees or hedgerows.
18. In reference to the second main issue, the submitted Tree Survey provides adequate information to demonstrate that the proposed development would not have an adverse effect on existing trees and hedgerows. It would therefore comply with Policies ST1(a)(b) and Policy EV8 of the LP which, amongst other things, seek to ensure that development will not adversely affect the character, quality or amenity of the environment, or adversely affect trees worthy of retention. It would also comply with paragraph 135 of the Framework that, amongst other things, seeks to ensure that developments are visually attractive as a result of effective landscaping.

Other Matters

19. The proposal is likely to increase the number of vehicles using this section of Beck Lane. However, the local Highway Authority have raised no objection to the proposal, and I have nothing before me to form an alternative view. Furthermore, the appeal site's location would allow future occupiers to use modes of transport other than the private car to meet their day-to-day needs. Concern has been raised regarding flooding. However, this has not been substantiated with evidence, particularly as the appeal site is located within Flood Zone 1.
20. The appeal site is not located within the Green Belt. While I acknowledge that other housing developments are being built in the surrounding area and on green field sites, the Council has been underperforming in its housing delivery for an extended period of time and they are significantly falling short of their five-year supply of deliverable housing sites. Concern has been raised regarding the cumulative impact of new housing on the capacity of existing services. However, I have not been directed to a policy that would require a development of this size to provide a financial contribution to support local services.
21. Limited evidence has been provided to substantiate whether Japanese Knotweed is present on the appeal site. Notwithstanding this, the eradication of invasive species falls outside the jurisdiction of planning. 'Layout', 'scale' and 'appearance' are reserved for subsequent approval and therefore it is unknown at this stage what the proposed dwellings would look like, their height, size or their siting. Therefore, matters regarding the impact of the proposal on the living conditions of the occupiers of neighbouring properties would be assessed at the reserved matters stage should I be minded to allow the appeal.

22. Should I be minded to allow the appeal, the hours of construction could be controlled by condition to ensure the proposal would not adversely affect the living conditions of the occupiers of existing properties. While wildlife has been witnessed on and around the appeal site, an Ecological Constraints Report⁴ ('the ECR') identifies there would be no adverse impact upon protected species as a result of the development. From the evidence before me, I have no reason to come to an alternative view.
23. I have been directed to a recent approval for the construction of three dwellings along the frontage of the appeal site⁵. However, the site is significantly smaller in area than the appeal site and therefore is not directly comparable to the appeal proposal. The indicative drawing demonstrates that nine dwellings could comfortably fit within the appeal site without resulting in overdevelopment.

Conditions

24. I have had regard to the conditions suggested by the Council. Where necessary, I have made amendments to these in the interests of clarity, precision, enforceability and rationalisation. The main parties were given time to comment on the proposed amendments and therefore have not been prejudiced. I have imposed standard conditions relating to the submission and timing of the reserved matters application(s) and the commencement of development. I have included a condition in respect of materials to ensure the external appearance of the proposal would be acceptable. A condition in respect of ecological enhancement measures is necessary to comply with the mitigation measures detailed within the ECR. Conditions in respect of visibility splays, an absence of gates to Beck Lane, and the closure of an existing site access are all necessary in respect of highway safety.
25. Drainage details for the disposal of surface water and foul sewerage is necessary to ensure an adequate system for the drainage of the site is implemented. A condition in respect of a scheme of sound mitigation is reasonable and necessary due to the site's proximity to a busy A-road and the requirement to safeguard the living conditions of future occupiers. A Construction Management Plan is necessary to ensure the proposal would not adversely affect the living conditions of the occupiers of neighbouring properties and highway safety during the construction phase of the development. It is necessary for these details to be agreed prior to the commencement of development, as potential adverse effects would need to be controlled from the development's outset. The appellant has agreed to the inclusion of this pre-commencement condition.
26. A condition requiring specific details to be included when the reserved matter of 'landscaping' is submitted for determination is reasonable and necessary to ensure the appearance of the development is acceptable, to ensure existing trees and hedgerows are retained and protected during the construction phase, and to ensure the recommended ecological mitigation measures are incorporated into the development.

⁴ Ref JME_1868_ECR_V1 dated 03/02/23

⁵ Planning Ref V/2022/0344

Conclusion

27. For the reasons given above, having had regard to the development plan as a whole and all other matters raised, the appeal should be allowed.

A Berry

INSPECTOR

Schedule of Conditions

- 1) Application for approval of the reserved matters shall be made to the local planning authority not later than 3 years from the date of this permission.
- 2) The development hereby permitted shall take place not later than 2 years from the date of approval of the last of the reserved matters to be approved.
- 3) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development takes place and the development shall be carried out as approved.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan, Block Plan, Site Access Plan, Drawing No F22033/04.
- 5) No development above slab level shall take place until samples of the materials and finishes to be used for the external elevations and roofs of the proposed dwellings have been submitted to and agreed in writing by the local planning authority. The development shall be carried out in accordance with the approved materials.
- 6) The reserved matter of 'landscaping' shall include but not be limited to the following details:
 - a) the proposed treatment of the site's boundaries which should include additional native hedgerow planting;
 - b) small holes (gaps 130mm x 130mm) within any garden fence/wall (and/or railings and/or hedgerows) to allow a continuous pathway in which hedgehogs and other small mammals can move through the developed residential site;
 - c) the retention of trees and hedgerows on the northern and southern boundaries;
 - d) the type, number and standard of trees which are to be planted; and
 - e) a Tree and Hedgerow Protection Plan in accordance with BS 5837: 2012.
- 7) No development above slab level shall take place until details of the type and number of bird and bat boxes/bricks and bee brick(s) which are to be installed within the fabric of each new dwelling have been submitted to and approved in writing by the local planning authority. The boxes/bricks shall be installed in accordance with the approved details prior to the occupation of each dwelling and retained thereafter.
- 8) No gate(s) shall be erected at the access to the development from the public highway.
- 9) Prior to the occupation of any dwelling hereby approved, the access and visibility splays shown on Drawing No F22033/04 shall be provided. The area within the visibility splays shall be kept free of all obstructions, structures or erections exceeding 0.6 metres in height in perpetuity.

- 10) Prior to the occupation of any dwelling hereby approved, the existing site access that has been made redundant as a consequence of this permission (as shown on Drawing No F22033/04) shall be permanently closed and the access crossing reinstated as verge and full height footway in accordance with details to be submitted to and approved in writing by the local planning authority.
- 11) The reserved matter of 'layout' shall include drainage details and plans for the disposal of surface water and foul sewage. The development shall be undertaken in accordance with the approved details prior to the occupation of any of the dwellings hereby approved.
- 12) No development above slab level shall take place until a scheme of sound mitigation has been submitted to and approved in writing by the local planning authority. The scheme shall be designed following the completion of a sound survey undertaken by a competent person. The scheme shall take account of the need to provide adequate ventilation. The scheme shall be designed to achieve the following criteria with the ventilation operating:
 - Bedrooms: 30 dB LAeq (15 Minutes) (2300 hrs 0700 hrs).
 - Living/Bedrooms: 35 dB LAeq (15 Minutes) (0700 hrs 2300 hrs).
 - All Other Habitable Rooms: 40 dB LAeq (15 Minutes) (0700 hrs 2300 hrs).
 - All Habitable Rooms: 45 dB L_{Amax} to occur no more than 10 times per night (2300 hrs 0700 hrs).

Where an open window would not achieve the above criteria, then ventilation will be by mechanical means.

Prior to the occupation of any of the dwellings hereby approved, the approved scheme shall be validated by a competent person and a validation report submitted to and approved in writing by the local planning authority. The approved scheme shall be implemented in full prior to the occupation of any of the dwellings hereby approved and retained thereafter.

- 13) Prior to the commencement of development, a Construction Management Plan shall be submitted to and agreed in writing by the local planning authority. This shall include but not be limited to:
 - a) how construction traffic will access the site;
 - b) proposed hours and days of working;
 - c) the parking of vehicles of site personnel, operatives and visitors;
 - d) location of site storage areas and compounds;
 - e) wheel washing facilities;
 - f) a strategy for the minimisation of noise, vibration and dust; and
 - g) site contact details in case of complaints.

The development hereby approved shall be constructed in accordance with the approved Construction Management Plan.

*****End of Conditions*****