



Appeal Decision

Site visit made on 30 April 2024

by S Pearce BA(Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 June 2024

Appeal Ref: APP/B3030/W/23/3333868

**The Gate House, Bathley Lane, North Muskham, Nottinghamshire
NG23 6HR**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline permission.
 - The appeal is made by Miss Paula Hall against the decision of Newark & Sherwood District Council.
 - The application Ref is 23/00447/OUT.
 - The development proposed is described as "I wish to obtain planning permission for a plot of land so that this can be sold onto a family or others to build a property sympathetic to the area and surroundings. I do not wish to build on this land myself, so there are no architectural building drawings/plans detailing floor levels, dimensions, rooms etc. It is purely a plot of land that I wish to sell with planning. It would be preferable for a local family/person to buy the plot which would provide opportunities for young people to be able to afford housing to remain or return to the village if they wished to."
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. Since the determination of this application, a revised National Planning Policy Framework (the Framework) was published on 19 December 2023 and updated on 20 December 2023. Those parts of the Framework most relevant to this appeal have not been amended. As a result, I consider that there is no requirement for me to seek further submissions on the Framework, and I am satisfied that no party's interests would be prejudiced by my taking this approach.
3. The proposal seeks outline planning permission with all matters reserved for future consideration. I have considered the appeal on this basis and have treated any details in relation to the reserved matters as illustrative.

Main Issues

4. The main issues are:
 - whether the appeal site would be a suitable location for the proposed development having regard to the development plan,
 - the effect of the proposed development on the character and appearance of the area, with regard to the impact on trees,
 - whether the proposed development would be suitably located in relation to flood risk,

- the effect of the proposed development on ecology, with regard to the impact on trees, and
- the effect of the proposed development on the living conditions of future occupiers, with regard to noise.

Reasons

Location

5. The appeal site comprises the residential garden associated with The Gate House. While it is located within a small cluster of other properties and commercial buildings, these comprise sporadic development. The appeal site is some distance from the nearest settlement of North Muskham. It is visually and physically separated from this settlement by the A1, a roundabout, open land and fields. In addition, there are no footways linking the existing development along Bathley Lane. Taking these factors into account, the appeal site is not well related to North Muskham and future occupiers are likely, therefore, to be reliant on private vehicles to access services and facilities. As such, the site lies outside of a village or settlement, within the countryside.
6. Spatial Policy 3 of the Newark and Sherwood Amended Core Strategy 2019 (ACS) states that development within the countryside will be strictly controlled and restricted to uses which require a rural setting. No substantive evidence has been submitted which demonstrates a rural setting is required for the appeal scheme.
7. While properties in the area may be sought after, no evidence has been put forward to suggest that the appeal scheme would fall within any of the specific types of dwellings allowed under Policy DM8 of the Newark and Sherwood Local Development Framework Allocations and Development Management Development Plan Document 2013 (DPD), or the criteria for rural housing identified within the Framework.
8. The appellant contends that a nearby bungalow was built a few decades ago. However, as I do not have the details of the planning background for this case, I cannot be certain it is directly comparable. The planning context in respect of a seating area and hotel serving an existing restaurant is different to that of an independent dwelling. In any case, I have determined the appeal on its own merits.
9. Consequently, the appeal site would not be in a suitable location for the proposed development, having regard to the development plan. This is contrary to ACS Spatial Policy 3 and DPD Policy DM8 and the requirements of the Framework, which seek, among other things, to deliver new development in villages and restrict new homes in the countryside to a limited number of exceptions.

Character and appearance

10. The site lies within the Trent Washlands Policy Zone 11: Cromwell, North and South Muskham, Kelham, Averham, Staythorpe and Rolleston Village Farmlands, as defined by the Newark and Sherwood Landscape Character Assessment Supplementary Planning Document 2013 (SPD). This area is characterised by flat, large scale intensive arable landscape and nucleated villages, fragmented in places by transport routes. The SPD seeks to conserve

the rural character of the landscape by concentrating new development around existing settlements and promote measures for strengthening the existing level of tree cover.

11. ACS Spatial Policy 3 requires that the scale of new development is appropriate to the proposed location and is small in nature. It also states that new development should not have a detrimental impact on the character of the location or its landscape setting.
12. Beyond the cluster of buildings in which the appeal site sits and the railway line, lies open countryside. While there was a small, dilapidated wooden structure within the appeal site at the time of my visit, the site comprises a predominately undeveloped, overgrown area, enclosed by trees, hedges and vegetation. By reason of their height and location, the trees are visible from Bathley Lane and contribute towards the visual amenity of the area. As such, although the appeal site comprises domestic curtilage, it is largely undeveloped and does not detract from the verdant, rural character and appearance of the area.
13. While outline with all matters reserved, the introduction of new residential development would erode a largely open and undeveloped area of land, in a countryside location. In addition, the appellant acknowledges that some of the surrounding trees will need to be cut down or cut back. However, no further details, such as a tree survey, have been submitted and the extent of the pruning and felling is unknown. Consequently, the introduction of built form and an increased residential use, together with the removal of some trees, would, through the loss of a largely open and undeveloped area of land, inevitably change the character of the appeal site. This would be at odds with, and detrimental to, the character and appearance of the area.
14. In conclusion, the proposed development would unacceptably harm the character and appearance of the area, contrary to ACS Spatial Policy 3, ACS Core Policies 9 and 13, DPD Policy DM5 and the guidance within the SPD. Collectively, these seek, among other things, to ensure development proposals reflect the rich local distinctiveness of the District's landscape and character and protect and enhance natural features. It is also contrary to the Framework which seeks, among other things, to ensure development is visually attractive and sympathetic to local character and that existing trees are retained wherever possible.

Flood Risk

15. Both the Framework and Planning Policy Guidance aim to steer development to areas with the lowest probability of flooding through the application of the sequential approach. ACS Core Policy 10 and DPD Policy DM5 reinforce this requirement.
16. Although it is alleged that The Gate House has never been in flood, nor any trains hindered due to flooding, the appeal site is, nevertheless, located within Flood Zone 2. While the appellant asserts that all of the properties within the village would be in Flood Zone 2 or 3, paragraph 168 of the Framework states that the sequential approach should be used in areas known to be at risk now or in the future from any form of flooding. Therefore, the sequential test needs to be satisfied. However, no sequential test has been submitted for consideration. In the absence of such, it cannot be safely concluded that there

are no other sites for the proposed development which are at lower risk of flooding.

17. Footnote 59 of the Framework states that a site-specific Flood Risk Assessment (FRA) should be provided for all development in Flood Zones 2 and 3. While the appeal scheme is accompanied by a FRA, there are concerns in respect of its robustness. However, in this case, as it has not been demonstrated that the appeal site is sequentially preferable, the requirements of the Framework have not been met and there is no need to consider this matter further. Consequently, there is insufficient evidence to demonstrate the proposed development would be suitably located in relation to flood risk.
18. For these reasons, I am not satisfied that the proposed development is in a suitable location having regard to flood risk. As such, it is contrary to ACS Core Policies 9 and 10, DPD Policy DM5 and the requirements of the Framework, insofar as they relate to flood risk.

Ecology

19. Paragraph 186 of the Framework states, among other things, that if significant harm to biodiversity resulting from a development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.
20. The appeal site is overgrown and surrounded on most sides by trees and vegetation, with an open field, predominately bordered by trees, to the rear. The appellant states that the trees are overgrown and would need cutting back. They also acknowledge that while some trees could remain, there are too many in a small space. In this context, the Council requested an ecology report and a tree survey, in order to assess the potential ecological impacts, if any, that may arise from the appeal scheme.
21. Having regard to the precautionary principle, in the absence of substantive evidence it is not possible to determine whether there would be any adverse impact upon biodiversity and whether any such harm could be adequately mitigated.
22. Therefore, I am unable to conclude that the proposal development could be accommodated without causing harm to ecology, and whether any harm identified could be satisfactorily mitigated. The appeal scheme is therefore contrary to ACS Core Policy 12 and DPD Policies DM5 and DM7 which, collectively, seek, among other things, to ensure natural features of importance within or adjacent to development sites should, wherever possible, be protected and enhanced and that where it is apparent that a site may provide a habitat for protected species, development proposals are supported by an up-to date ecological assessment. The proposal would also conflict with the Framework, as set out above.

Living conditions

23. The appeal site is located between the strategic road network of the A1 and East Coast railway line. While only a snapshot in time, during my visit I observed two passing trains, which were audible from within the appeal site. The A1 is a busy road and there was a near constant sound of road noise in and around the appeal site. As such, future occupiers are likely to experience

some level of noise as a result of the appeal site's proximity to the A1 and railway line.

24. The Framework states that to prevent unacceptable risk from pollution, planning decisions should ensure that new development is appropriate for its location.
25. While there are other nearby properties and businesses within the vicinity of the appeal site and noting that the appellant and their family lived at The Gate House for many years without issue, no noise assessment has been submitted for consideration. Without such an assessment, I cannot properly consider any associated noise impact arising from the A1 or railway line, nor whether any measures could be employed as part of the development to mitigate against any such impact.
26. Consequently, I cannot be certain that appropriate living conditions can be secured for future occupiers, with regard to noise. I therefore find conflict with ACS Core Policy 9 and DPD Policy DM5 which seek, among other things, to ensure that the presence of existing development which has the potential for a detrimental impact on new development should be taken into account and mitigated for in proposals. There is also conflict with the Framework, which seeks to ensure a good standard of amenity for future users.

Conclusion

27. For the above reasons, I conclude that the proposed development would conflict with the development plan as a whole. There are no material considerations, including the Framework, that indicate I should conclude other than in accordance with it. Therefore, I conclude that the appeal should be dismissed.

S Pearce

INSPECTOR