



Appeal Decision

Site visit made on 18 June 2024

by **Andrew McCormack BSc (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 7 August 2024

Appeal Ref: APP/J3015/W/23/3331913

Former Lynncroft Primary School, Lynncroft, Eastwood, Nottinghamshire NG16 3FZ

- 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 Avant Homes Central against the decision of Broxtowe Borough Council.
 - The application Ref 22/00894/REM, dated 18 November 2022, was refused by notice dated 7 September 2023.
 - The development proposed is construction of 104 dwellings (reserved matters of access, landscaping, layout and scale in relation to an outline approval – Planning Ref: 20/00844/OUT).
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Decision

1. The appeal is allowed and planning permission is granted for construction of 104 dwellings (reserved matters of access, landscaping, layout and scale in relation to an outline approval – Planning Reference 20/00844/OUT) at the Former Lynncroft Primary School, Lynncroft, Eastwood, Nottinghamshire NG16 3FZ in accordance with the terms of the application Ref:22/00894/REM, dated 18 November 2022, and subject to the conditions detailed in the attached schedule.

Application for Costs

2. An application for costs was made by Avant Homes Central against Broxtowe Borough Council. This application is the subject of a separate decision.

Procedural Matters

3. The principle of development has been considered by the Council to be acceptable through the allocation of the appeal site within the Broxtowe Local Plan Part 2 (2019) (the Local Plan) for residential development and the granting of outline planning permission through application Ref: 20/00844/OUT. Consequently, the application which is the subject of this appeal is for reserved matters relating to that outline planning consent.
4. The application which is the subject of this appeal was recommended for approval with conditions by Council Officers at two separate Planning Committee Meetings held on 5 July and 6 September 2023. However, the application was deferred and then refused on those respective dates by the Planning Committee for the reason set out on the Council's Decision Notice.

Main Issue

5. The main issue in this appeal is therefore the effect of the proposed development on the living conditions of occupiers of neighbouring properties with regard to an overlooking, overbearing and overshadowing form of development.

Reasons

6. The appeal site comprises part of the former site of Lynncroft Primary School and has a significant change of ground level within it, identified as being approximately 10 metres across the site overall. The site is allocated for residential purposes in the Local Plan for up to 200 dwellings. There are residential properties to the north of the site along Garden Road which are at a lower ground level. These are mostly two-storey, semi-detached dwellings with long rear gardens which, in part, have mature trees along the boundary with the appeal site. There is a footpath that links Garden Road with Atherfield Gardens which is to the west and there are further two-storey semi-detached dwellings along Atherfield Gardens which also back onto the site. These properties are largely at the same ground level as the appeal site adjacent.
7. The principal matter of the Council's refusal relates to the impact of the proposed dwellings within the scheme layout positioned nearest to the existing properties along Garden Road and Atherfield Gardens on the northwestern part of the appeal site. The Council's concerns are compounded by the difference in ground levels between the appeal site, which is higher, and the existing adjacent properties, particularly on Garden Road.
8. The Council has no specific development plan policy or guidance regarding separation distances between properties. I note in the Council's statement that it generally uses the rule of a minimum separation distance of 21 metres 'back-to-back' for existing and proposed dwellings. From the details submitted, and observations on site during my visit, I find that the separation distances between the nearest proposed dwellings within the scheme and the existing properties on Garden Road and Atherfield Gardens are in excess of the minimum 21 metres.
9. I have also had regard to the Council's point that its application of this minimum separation measure is dependent on the topography of each individual site. In this case, the topography is such that the land within the appeal site is significantly higher than the adjacent properties on Garden Road. However, the boundary between the appeal site and the rear gardens of the Garden Road properties has significant existing vegetation and trees which provide a substantial amount of screening of the existing dwellings from the appeal site. From what I have seen, I find that the proposed scheme does not seek to remove any of this existing planting. Indeed, it is proposed to provide additional planting to strengthen and enhance the vegetation along the site boundary with the existing properties on Garden Road and Atherfield Gardens.
10. I acknowledge the Council's concern that the level of planting, both existing and proposed, would not be sufficient to prevent overlooking and an overbearing development. However, taking into account the additional work which the appellant has undertaken following the initial Planning Committee meeting, I find that the proposed development incorporating the changes in scale, height and design of the proposed dwellings relevant to the existing properties, as presented to the Planning Committee on 6 September 2023, and the combination of the existing and proposed planting and vegetation would result in sufficient mitigation to minimise the potential for the overlooking of existing dwellings. This is demonstrated further through the proposed erection of a 1.8 metre high close-boarded timber fence with additional trellis on top along the boundary of the site between the existing and proposed dwellings. Furthermore, I am satisfied that any adverse effect relating to privacy as a result of the topography of the site would be sufficiently mitigated.
11. The revised proposals would also result in a scheme which would reasonably and sufficiently limit any adverse impacts of the proposed dwellings being overbearing to the occupiers of the existing properties. This would be achieved through the combination of the separation distances proposed, the screening effect of the boundary planting in place and enhanced and by the revised scale, size and design of the proposed dwellings.

12. In relation to the proposed dwellings overshadowing existing properties on Garden Road, it is acknowledged that the daylight and sunlight studies undertaken on behalf of the appellant only consider the proposed impact of the development on the existing properties and occupiers through the months of March to September. There is no assessment presented that mitigates against the overshadowing impacts of the proposed scheme during the winter months from October to February where shading would likely be greater. As such, there is no full assessment before me.
13. Notwithstanding this, the Daylight and Sunlight Assessment (DSA) submitted indicates that all garden and amenity areas assessed meet or exceed the BRE target criteria for sunlight. This is demonstrated because at least 50% of their area receives at least two hours of direct sunlight on the nominated day of 21 March or the reduction in the area receiving sun on that day is less than 20%. As a result, I am satisfied that the report overall demonstrates that the proposed development would not result in any material changes to sunlight and daylight reaching the garden areas of the existing properties along Garden Road.
14. In addition, I note that the submitted DSA identifies that all 127 rooms assessed within properties along Garden Road would meet the target values set out within the BRE guidelines. As such, in accordance with the BRE guidance, I am satisfied that daylight levels and amenity for the occupiers of those existing properties assessed would not be adversely affected by the proposal.
15. Overall, I find that the proposed scheme, with the revisions provided to the Planning Committee on 6 September 2023 incorporated, accords with Policy 8 of the Greater Nottingham Local Plan Part 1. It provides a mix of housing and tenure types to assist in achieving sustainable development. The scheme is also in accordance with Policy 15 of the Local Plan through the required contribution of 10% of affordable housing being proposed as well as providing an appropriate mix of market and affordable housing on site that is aligned to the current need in the local area. Furthermore, the proposed development complies with Policy 17 of the Local Plan as it would provide a good standard of amenity and would not substantively adversely impact the amenity of neighbouring properties and occupiers. Moreover, I am satisfied that the proposal complies with the Framework in relation to protecting the amenity of existing and future occupiers.

Other Matters

Flood Risk and Drainage Management

16. The proposed development does not lie within Flood Zones 2 or 3. Notwithstanding this, I have had regard to the overall topography of the site and surrounding area and the comments made by interested parties regarding flooding and drainage concerns. I am also aware the proposed scheme needs to ensure it does not result in any increased risk of flood for the existing dwellings adjacent to the site and at a lower ground level to it. Sustainable Drainage provision is proposed to be incorporated into the scheme within the site layout plan and this is in line with the Key Development Requirements of Policy 6.1 of the Local Plan. Furthermore, I note the findings of the Flood Risk Assessment (FRA) and Drainage Study submitted with the outline planning application which assessed the risks from all forms of flooding to and from the proposed development. In doing so, I note also that the FRA demonstrated to the satisfaction of the Council at that time how these flood risks would be managed and mitigated.
17. Specific conditions were attached to the outline approval for the proposed development. As such, I am satisfied that the details of any surface water drainage and flood risk scheme based on the approved FRA and Drainage Strategy will be properly considered and approved as part of the formal discharge of the relevant conditions attached to the outline planning permission (ref: 20/00844/OUT).

Access

18. I have had regard to the access to the appeal site, noting that vehicle access is taken from Lynncroft, a relatively narrow, inclined highway with residential properties along its eastern side, opposite the appeal site. I also note that an application to create the highway junction at this point with associated drainage infrastructure was submitted to, and approved by, the Council in 2020. This has subsequently been completed, as I observed during my visit. As a result, I find that suitable vehicle access to the site that has been provided that is endorsed by the Council and the highway authority. I am therefore satisfied that this provides suitable and appropriate access to serve the appeal site and its development.
19. Pedestrian access into and through the site is identified on the proposed site layout plan. Primarily, this access consists of a footpath running north to south across the site from Garden Road to Walter Street. As I have seen, this pedestrian link is already in place and will provide suitable and acceptable connectivity for pedestrians across the site to the surrounding area but also provide a point of connection for pedestrians within the site.

Ecology

20. I have taken account of the findings of the various ecological appraisals and reports produced on behalf of the appellant at both the outline and reserved matters application stage. It is noted, amongst other matters, that the presence of badgers on the appeal site had been identified and that it is stated that all mitigation measures have been undertaken to prevent any negative impacts from affecting the badgers and their habitats. This includes the implementation of a 30-metre buffer from the badger sett and nearby dense areas of vegetation. This is to be ensured by condition attached to the outline consent of development at the appeal site.
21. Further supporting documents have been submitted, including an Ecological Enhancement Plan and a Hedgehog Highway Standard Detail Plan which have been produced in response to the recommendations of the Preliminary Ecological Appraisal Report, submitted to the Council on 24 April 2023. These documents set out details relating to, for example, the location of proposed bat and bird boxes throughout the appeal site as well as a schedule of maintenance for them. The submitted evidence also provides details on the location of a hedgehog highway and how hedgehogs will access it.
22. In light of the above, and all other relevant points and matters relating to ecological matters, I find that the proposed scheme addresses these ecological concerns and matters reasonably and practicably through the work that has been identified and can be ensured by planning conditions and the work proposed in future.

Other considerations

23. In addition to the above, I have had regard to all other matters raised by other interested parties, such as noise and disturbance, encroachment into a green area, increased levels of traffic in the local area and the impact of the proposed scheme on local infrastructure and services. Having assessed the evidence before me, I find that these other concerns can be appropriately and reasonably addressed through planning conditions attached to the outline consent or the conditions set out in the schedule attached to this decision.

Planning Balance

24. The proposed development would provide a wide range of size and type of housing which would contribute to the delivery of housing stock and mix within the Borough. It would also provide affordable housing to an amount consistent with local policy requirements. Moreover, it would be set within a layout which encourages the use of sustainable modes of transport with good connections to the surrounding area. Overall, in my assessment, the proposal would be consistent with the policies contained within the development plan and provide a good standard of living for future occupiers in the local area. These benefits

attract significant weight in favour of the proposal. The harms of the proposal in relation to the effect on the living conditions of neighbouring occupiers and all other harms identified have been carefully considered. However, I do not find such harms, when assessed individually and cumulatively, to be so significant as to outweigh the significant weight that I have afforded the identified benefits.

Conditions

25. In addition to the standard conditions relating to time (1) and approved plans (2), I have attached a condition regarding the confirmation of details, future management and maintenance of shared private driveways, including their associated drainage (3). This condition is reasonable and necessary for reasons of highway safety and to ensure an acceptable development that is in accord with Policy 10 of the Aligned Core Strategy 2014 and Policy 17 of the Local Plan.
26. Other conditions concern the occupation of the proposed dwellings being dependent upon the satisfactory provision of works. In the first instance, Condition 4 involves the provision of traffic calming measures throughout the site, the details of which are to be submitted to, and approved by, the local planning authority. A further condition (5) involves driveways and shared driveways being required to be surfaced in a bound material for a minimum distance of 5 metres behind the highway. These conditions are reasonable and necessary to ensure that the development proposed does not result in any significant detrimental effects in terms of flooding and drainage, is acceptable regarding highway safety and is in accordance with the relevant policies of the development plan.

Conclusion

27. For the above reasons, and having had regard to all other matters raised, I conclude that the appeal is allowed, and planning permission is granted, subject to the conditions set out in the attached schedule.

A McCormack

Inspector

Schedule of Conditions

- 1) The development to which this approval relates shall be begun no later than the expiration of two years from the final approval of the reserved matters, or in the case of approval of different dates, the final approval of the last such matter to be approved.
- 2) The development hereby permitted shall be carried out in accordance with drawings numbered as follows:

Site Location Plan – 6200-100

House Types Floor Plans & Elevations Pack

- Askern End – Planning Sheet – Floor Plans (Dwg No: AV22/ASK/0-001 Rev B)
- Baildon End – Planning Sheet – Floor Plans (Dwg No: AV22/BAI/0-001 Rev C)
- Baildon End – Planning Sheet – Elevations (Dwg No: AV22/BAI/0-002 Rev C)
- Cadeby End – Planning Sheet – Elevations (Dwg No: AV22/CAD/0-002 Rev B)
- Cookridge End – Planning Sheet – Floor Plans (Dwg No: AV22/COO/0-001 Rev C)
- Cookridge – Planning Sheet – Elevations (Dwg No: AV22/COO/0-002 Rev B)
- Denby End – Planning Sheet – Floor Plans (Dwg No: AV22/DEN/0-001 Rev B)
- Denby End – Planning Sheet – Elevations (Dwg No: AV22/DEN/0-002 Rev B)
- Fernlee – Planning Sheet – Floor Plans (Dwg No: FER/END/0-001 Rev C)
- Horbury Det – Planning Sheet – Floor Plans (Dwg No: AV22/HOR/0-001 Rev C)
- Leyburn Det- Planning Sheet – Floor Plans (Dwg No: AV22/LEY/0-001 Rev B)
- Leyburn – Planning Sheet – Elevations (Dwg No: AV22/LEY/0-002 Rev C)
- Oakwood Semi – Planning Sheet – Floor Plans (Dwg No: AV22/OAK/0-001 Rev B)
- Ripon End – Planning Sheet – Floor Plans (Dwg No: AV22/RIP/0-001 Rev B)
- Thornton Det – Planning Sheet – Floor Plans (Dwg No: AV22/THO/0-001 Rev C)
- Wentbridge Det – Planning Sheet – Floor Plans (Dwg No: AV22/WEN/0-001 Rev B)

Single Garage Floor Plan & Elevations (Dwg No: 500/001 Rev A)

Boundary Treatments – 1.8m High Brick Pier & Panel Wall (Dwg No: SD 12-001)

Boundary Treatments – 1.2m Post & Rail (Dwg No: SD 12-010)

Boundary – 1.8m Screen Fence (Dwg No: SD 12-025)

Arboricultural Impact Assessment, Tree Impact and Tree Constraints Plan

(Above received by the Local Planning Authority 18 November 2022)

Hedgehog Highway Standard Details – SD12-045A

(Above received by the Local Planning Authority 24 March 2023)

Ecological Enhancement Plan - 6200-290B

(Above received by the Local Planning Authority 19 April 2023)

Tracking Plan – 620-295C

Lynncroft POS Levels Layout 6200-203

(Above received by the Local Planning Authority 31 May 2023)

Materials Layout – 6200-250C

(Above received by the Local Planning Authority 14 June 2023)

Askern Hipped – Dwg. No: ASK/HIP/END/0-002

Askern End – Dwg. No: ASK/LP/EMD/0-002 Rev A

Cadeby – Det – Dwg. No: CAD/LP/0-002 Rev A

Fernlee End – Dwg. No: FER/LP/END/0-002 Rev A

Horbury Detached – Dwg. No: HOR/LP/0-002 Rev A

Oakwood – Dwg. No: OAK/LP/0-002 Rev A
Ripon Hipped – Dwg. No: RIP/END/Hip/0-002 Rev A
Ripon End – Dwg. No: RIP/END/LP/0-002 Rev A
Thornton Detached – Dwg. No: THO/DET/Hip/0-002 Rev A
Wentbridge Detached – Dwg. No: WEN/LP/0-002 Rev A
Planning Layout – Dwg. No: 6200–200 Rev J
Presentation Layout – Dwg. No: 6200–200 Rev J
Site Sections (sheet 1) – Dwg. No: 6200-230-001 Rev B
Site Sections (sheet 2) – Dwg. No: 6200-230-002 Rev A
Managed Phasing Plan – Dwg. No: 6200-310.2 Rev C
Managed Areas Plan – Dwg. No: 6200-310 Rev C
Tenure Split Plan – Dwg. No: 6200-320
Landscape Masterplan – Dwg. No: R/2658/1F
Fence details: 1.8m High Fence, with 0.3m Trellis (2.1m total fence height):
Dwg.No: SD12-040

(Above received by the Local Planning Authority 4 August 2023)

- 3) No part of the development hereby permitted shall commence until details of the proposed arrangements and plan for future management and maintenance of the shared private drive including associated drainage have been submitted to, and approved in writing by, the Local Planning Authority. The shared private drive and drainage shall thereafter be maintained in accordance with the approved management and maintenance details until such time that a private Management and Maintenance Company has been established.
- 4) Occupation of the proposed dwellings shall not take place until traffic calming features have been provided in accordance with details first submitted to, and approved in writing by, the Local Planning Authority.
- 5) Occupation of the proposed dwellings shall not take place until their respective driveways / shared driveways have been surfaced in a bound material (not loose gravel) for a minimum distance of 5.0 metres behind the highway boundary, and which shall be drained to prevent the discharge of surface water from the driveways to the public highway. The bound material and the provision to prevent the discharge of surface water to the public highway shall be retained for the lifetime of the development.

End of Schedule