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# Appeal Decision

Site visit made on 4 September 2024

**by A Hunter LLB (Hons) PG Dip MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 25<sup>th</sup> September 2024**

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**Appeal Ref: APP/B3030/W/24/3345773**

**Land off Holly Court, Rolleston, Nottinghamshire NG23 5SN**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
  - The appeal is made by Mrs Sara Williams of Arc Partnership (on behalf of Nottinghamshire County Council) against the decision of Newark and Sherwood District Council.
  - The application Ref is 22/02341/OUT.
  - The development proposed is the erection of two no. detached dwellings and the re-alignment of Rolleston public footpath no. 5.
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## Decision

1. The appeal is allowed and planning permission is granted for the erection of two no. detached dwellings and the re-alignment of Rolleston public footpath no. 5, at Land off Holly Court, Rolleston, Nottinghamshire NG23 5SN in accordance with the terms of the application, Ref 22/02341/OUT, subject to the schedule of conditions attached to the end of this decision.

## Application for costs

2. An application for an award of costs has been made by Mrs Sara Williams of Arc Partnership against Newark and Sherwood District Council. This is the subject of a separate decision.

## Preliminary Matters

3. The planning application was for outline planning permission with all matters reserved, except access. The appeal submission includes layout and landscaping proposals, which are for illustrative purposes only. I have determined the appeal on this basis.
4. A draft section 106 agreement (legal agreement), which is unsigned and undated has been submitted. The legal agreement seeks to provide for a new landscaped common area, and relates to matters of the ownership and maintenance of that area, I shall return to the legal agreement later in my decision.
5. Following the Council's notice of decision, the National Planning Policy Framework (the Framework) was revised on 19 December 2023. Having regard to the matters that are most relevant to this appeal, there have been few substantive changes. Hence, I am satisfied that no one will be prejudiced by the changes to the national policy context, and both parties have had the opportunity to make comments on the revised Framework within their statements and final comments.

6. I am aware of the Deputy Prime Minister and Secretary of State for Housing, Communities, and Local Government's Written Ministerial Statement "Building the homes we need" dated 30 July 2024 regarding changes to the planning system, and the consultation "Proposed reforms to the National Planning Policy Framework and other changes to the planning system" also dated 30 July 2024. However, I am content that the issues they both raise are not material to the determination of this appeal based on the evidence before me. As such, there has been no need to seek the views of the parties regarding these proposed changes, and no party would be prejudiced by this.
7. The Council has advised that its Draft Amended Allocations & Development Management DPD (DAADM) was submitted to the Secretary of State on the 18 January 2024 but is yet to be examined. It has also said there are unresolved objections to the DAADM, as such I only attach limited weight to it in my decision. However, none of the parties have identified any policies of the DAADM as being relevant to the appeal proposal, and the appeal has been determined on this basis.

### **Main Issue**

8. The main issue is the suitability of the site for the proposal, including the density of the proposed development.

### **Reasons**

9. The appeal site is an undeveloped grassed area with a frontage onto Holly Court, containing several trees and hedges, which are part of a wider Tree Preservation Order<sup>1</sup> that specifically refers to trees within the appeal site, including 1 no. copper beech; 3 no. beech; and a group of trees. The appeal site is located to the rear of Ullayat's Cottage, which has a side-on relationship with Fiskerton Road. A Public Right of Way; Rolleston Public Footpath No. 5 (PROW) crosses through one side of the appeal site from Fiskerton Road to agricultural land beyond the village. The PROW runs parallel to the appeal site's boundary onto Holly Court, a cul-de-sac situated to one side of the appeal site that serves a small number of existing residential properties.
10. I saw that Rolleston is a reasonably sized village, with a bus service, and a railway station, albeit a short walk from the village itself, and I also note the comments made regarding the frequency of some of the services. There is also a public house (which is currently trading), a playing field/recreational area, and a village hall. I also note that there was a cul-de-sac of some recent new housing near to the appeal site. Although there was not a local shop or school, and the use of a car may well be desirable for its residents, the village does have public transport links, and it has some important local services/facilities. Consequently, I did not find its location to be isolated or unsustainable.
11. My attention has been drawn to an extant planning permission<sup>2</sup> for a detached dwelling to the side of no. 17 Holly Court, which is also located on one side of the appeal site (separated by the PROW). As a result, the appeal site would be located between the extant approval and Ullayat's Cottage, with a frontage onto Holly Court, which includes residential properties to its other side. Beyond its other boundary, and separated by intervening land, is the curtilage of another property. As a result, the development of the appeal site, would infill space

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<sup>1</sup> Newark and Sherwood Council Tree Preservation Order No.N399. 2022

<sup>2</sup> Ref. 22/02338/FUL

between an existing dwelling and an approved dwelling. Consequently, and taking into account the extant approval, the appeal site is not separate from the village or located within the countryside, instead it would be part of the built-up area of the village. Even considering that the appeal site is not previously developed land, it would be a suitable site for housing.

12. The illustrative layout plans show that 2 no. detached dwellings could be accommodated on the appeal site, each facing towards Holly Court and not in a 'backland' position, each having a reasonably sized curtilage, off-street parking and having reasonable separation from all of their boundaries. The illustrative plans also show that Ulliyatt's Cottage would also retain adequate outdoor space. Based on my site observations and the submitted information, I am content that 2 no. dwellings could be constructed on the appeal site in a form that would not be an overly dense form of development. Ultimately the details of the proposal would, however, be addressed at a later stage.
13. I therefore conclude that the appeal site is suitable for the proposed development and that the site could accommodate 2 no. dwellings in an acceptable density, and the proposal would comply with Spatial Policy 3 of the Amended Core Strategy; Plan Review, Review of the Newark & Sherwood Local Development Framework, Core Strategy and Allocations, adopted March 2019 (ACS) insofar as it requires housing in such a village location to be small scale, and appropriate to its location, and that the settlement is sustainable and accessible with a range of local services. In addition, the proposal also complies with paragraph 83 of the Framework that supports new housing within existing villages where it will enhance or maintain the vitality of rural communities and support local services.
14. The Council referred to the proposal conflicting with Policy DM8 of the Newark and Sherwood Local Development Framework, Allocations and Development Management, Development Plan Document, adopted July 2013 (ADM). That policy is focussed on development that is away from the main built-up area of villages in the open countryside. In view of my findings above relating to the appeal site being within the existing village, I did not identify conflict between the appeal proposal and ADM Policy DM8.

### **Other Matters**

15. The draft legal agreement seeks to secure an area of common space containing planting within the appeal site, together with maintenance measures and ownership. I acknowledge the intention of both parties to ensure replacement planting to help achieve a biodiversity net gain, however, both landscaping and layout are reserved matters and neither party has requested that they be considered at this stage. As such it is not reasonable or necessary to secure precise areas for new planting at this outline stage when such matters are not before me for consideration. Furthermore, on the limited evidence before me, and noting that this proposal is not subject to a mandatory 10% biodiversity net gain, it is not clear why such planting details would need to be the subject of a legal agreement in this case, and could not, if necessary, be subject to a condition(s) if relevant at a later stage(s).
16. It is noted that the description of development refers to the re-alignment of part of the PROW that crosses the appeal site. Whilst allowing this appeal would approve the access details, including movements through the appeal site for pedestrians, there would also need to be a separate order made in

accordance with relevant legislation to divert the PROW, this would be separate to any grant of outline planning permission.

17. I have had regard to the comments made about whether Ullyat's Cottage is a non-designated heritage asset (NDHA) due to its connection with Kate Greenaway said to be an important historic literary figure who at one time had an association with Rolleston. I also recognise the Kate Greenaway Trail around the village and that Ullyat's Cottage is part of the trail. However, I note the Council found that her association to the property was limited, which was never understood to have been her home. Moreover, she is said to have spent more of her time in London where she was associated with. In addition, the property has been much altered in more recent times. As such I see no reason to disagree with the Council that Ullyat's Cottage is not a NDHA in this respect.
18. I have had regard to all representations which include matters in addition to the main issue above, including some relating to details of layout, scale, and appearance, which would need to be agreed by the Council as part of any reserved matters application(s). From what I have seen on the illustrative layout and my site visit, 2 no. dwellings could be accommodated on the appeal site, that would retain appropriate distances to neighbouring properties, and ensure no material harm to the living conditions of neighbouring occupiers, including their privacy.
19. Comments have been made about many aspects of highway safety. From my site inspection I saw that Holly Court was a cul-de-sac serving a small number of properties, noting its width and the proposed PROW alongside the carriage way, and taking account of visibility onto both Holly Court for the proposed accesses and the existing junction onto Fiskerton Road, I am content that there would not be any unacceptable highway safety risks from the proposal. I am also satisfied that it would be possible to provide adequate off-street parking for each dwelling. It is also noteworthy that the Council also did not identify any unacceptable harm to highway safety.
20. Considering the submitted information and all comments received, I am content that the protected trees that could be affected by the accesses and footpath re-alignment can be adequately protected. The effect of the reserved matters upon other trees within and adjoining the appeal site, would need to be assessed later through the reserved matters application(s). However, I am confident that 2 no. proposed dwellings could be accommodated on the appeal site without causing unacceptable impacts on existing trees that are proposed to be retained. Furthermore, it is also possible that suitable replacement planting could be provided, where required, for trees that are identified as having a lower value, and are not required to be retained.
21. The appellant's ecological survey has assessed the potential effects of developing the site for housing. It identified no unacceptable harm, subject to conditions, including mitigation measures, such as nesting boxes. As a result, no unacceptable effects have been identified, and I see no reason to disagree with its conclusions.
22. Concerns have been raised regarding surface water flood risks and from wider flooding in the locality. My consideration is limited to the appeal site only, a condition could be imposed requiring precise details of surface water drainage to be agreed in advance to reduce the risks of any flooding to, or run-off from the appeal site.

23. Despite the comments received, I have no evidence that local utilities such as the water, sewer and electricity connections would not be possible for the proposed dwellings, and I note the Council has not raised objections in principle regarding these aspects.

### **Conditions**

24. In the interests of necessity, precision, and clarity I have edited or omitted some of the Council's suggested conditions. Condition (1) which relates to all reserved matters, is necessary to ensure compliance with Section 92 of the Town and Country Planning Act 1990. Condition (2 & 3) are the statutory time conditions. I imposed an approved plans condition (4) in the interest of certainty, relating to only the site location plan and access details that are before me for consideration at this stage.
25. Regarding access, a condition (5) is necessary to ensure that the existing PROW is diverted, in accordance with the approved access details to facilitate the continued use of the public footpath through the appeal site and to ensure the approved development can be fully implemented. It is noted that no objections in principle have been raised by the public rights of way officer, as such there is no evidence that such a diversion would not be possible or that a condition relating to its diversion would be unreasonable. Given that the new PROW is intended to be adopted and would partly abut Holly Court, precise details of the footpath are also necessary in the interests of pedestrian and highway safety. The condition in this respect is a prior to commencement condition, given the location of the PROW, and its direct effect upon the access arrangements and movements through the site. A condition (11) is also necessary to ensure that the 2 no. dwellings can have satisfactory vehicular access arrangements onto Holly Court in the interests of highway safety, although with surface water drainage being addressed separately (condition 10) it did not need to be part of that condition, as suggested by the Council.
26. Conditions (6 and 7) are necessary in relation to the protected trees shown to be retained, insofar as they relate to the access details currently before me, these conditions are necessary to protect the trees during construction works and for any works within their root protection areas. These conditions are also necessary as these trees make a positive contribution to the character and appearance of the area.
27. It is necessary to condition (9) the recommendations of the appellant's Preliminary Ecological Appraisal and Biodiversity Net Gain Assessment, dated October 2023, prepared by Emec, except for any new planting, in order to fully take account of protected species and appropriate mitigation measures, and ensure removal of non-native plants. As I am unable to assess the illustrative landscaping details as part of this proposal, and mindful of both parties seeking to achieve a biodiversity net gain through a planning obligation, a condition (8) in this case is necessary to ensure that the details submitted at reserved matters achieve a biodiversity net gain for the development as completed, and to comply with ADM Policy DM7 and ACS Policy CP12, and paragraph 180(d) of the Framework.
28. In response to comments by interested parties, a condition (10) is necessary to ensure that surface water can be satisfactorily drained from the proposal, to minimise flood risks.

29. Conditions regarding external appearance of the development, landscaping, the layout and appearance of driveways, and the height and scale of the proposed dwellings (including their storey height) are not appropriate at this stage, these matters would be assessed at reserved matters stage(s). Nor did I find a condition limiting the dwellings to having no more than 3 bedrooms to be reasonable, not only would the layout and scale of the proposal be assessed at a later stage, but Newark and Sherwood District Council's District Wide Housing Needs Assessment for the Southwell area also includes reference to a market need for 4-bedroom properties.

### **Conclusion**

30. For the reasons given above, considering the development plan as a whole and all relevant material considerations, the appeal is allowed.

*A Hunter*

INSPECTOR

### **Schedule of Conditions**

- 1) 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.
- 2) 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.
- 3) 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.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: drawing no's 27793-ARC-XX-00-DR-A-0001 Rev P05 (site plan); and 27793-ARC-XX-XX-DR-A-AB009 P01 (site plan with access positions and visibility splays).
- 5) No works shall be undertaken on or affecting any part of the land comprising the current Rolleston Footpath No.5 within the appeal site until such time as a replacement Footpath has been provided within the appeal site, and the relevant part of the public right of way that currently exists within the appeal site has been legally extinguished. The precise details of the new Footpath shall be submitted to and approved in writing by the local planning authority prior to any such works being undertaken together with a timetable for its implementation. The development shall thereafter be undertaken in accordance with the approved details and timetable.
- 6) No works shall commence on the appeal site until precise details of fencing, including its type and location, to protect the root protection areas of trees T9, T10, T11, and T12 as set out on pages 21 and 22 of the Revised Arboricultural Survey and Impact Assessment, dated 12 October 2022, prepared by Lesley J. Adams, has been submitted to and approved in writing by the local planning authority. The fencing shall be erected in accordance with the approved details before any equipment, machinery or materials are brought onto the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed within any fenced area, and the ground levels within



- those areas shall not be altered, nor shall any excavation be made, without the prior written consent of the local planning authority.
- 7) No works shall commence on the appeal site until precise details of any works within the root protection areas of Trees T9, T10, T11, and T12 as set out on pages 21 and 22 of the Revised Arboricultural Survey and Impact Assessment, dated 12 October 2022, prepared by Lesley J. Adams, including any ground disturbance works associated with the public footway, have been submitted to and approved in writing by the Local Planning Authority. The development shall thereafter be undertaken in accordance with the approved details.
  - 8) No works shall commence on the appeal site until precise details to provide a biodiversity net gain on the appeal site following the completion of the development hereby permitted, have been submitted to and approved in writing by the Local Planning Authority, together with a timetable for their implementation and future maintenance. The development shall be undertaken in accordance with the approved details and timetable and retained thereafter.
  - 9) The development shall be undertaken in accordance with the recommendations as set out in Section 6.2 – 6.6.2 of the Preliminary Ecological Appraisal and Biodiversity Net Gain Assessment, dated October 2023, prepared by Emec, with precise details of these measures to be submitted to and approved in writing by the local planning authority prior to the commencement of the development. The details shall include a timetable for their implementation and retention details. The development shall thereafter be undertaken in accordance with the approved details.
  - 10) The development hereby permitted shall not be occupied until surface water drainage works shall have been fully implemented in accordance with details that shall first have been submitted to and approved in writing by the local planning authority. Before any details are submitted to the local planning authority an assessment shall be carried out of the potential for disposing of surface water by means of a sustainable drainage system, having regard to Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version), and the results of the assessment shall have been provided to the local planning authority. Where a sustainable drainage scheme is to be provided, the submitted details shall:
    - provide information about the design storm period and intensity, the method employed to delay and control the surface water discharged from the site and the measures taken to prevent pollution of the receiving groundwater and/or surface waters;
    - include a timetable for its implementation; and,
    - provide a management and maintenance plan for the lifetime of the development which shall include the arrangements for adoption by any public authority or statutory undertaker and any other arrangements to secure the operation of the scheme throughout its lifetime.The development shall be undertaken in accordance with the agreed details, timetable and management and maintenance details.
  - 11) No dwelling hereby approved shall be occupied until dropped vehicular footway crossings are available for use and constructed in accordance with details that shall first have been submitted to and approved in writing by the Local Planning Authority. Thereafter the development shall be undertaken in accordance with the approved details.

END OF SCHEDULE OF CONDITIONS