



Appeal Decision

Site visit made on 9 September 2024

by Katie McDonald MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 September 2024

Appeal Ref: APP/G2435/W/24/3342603

84 Ashby Road, Woodville, Swadlincote, Derbyshire DE11 7BY

- 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 Mr Matthew Stevenson against the decision of North West Leicestershire District Council.
 - The application Ref is 23/01367/OUT.
 - The development proposed is for the erection of 3 no. detached dwellings with associated garaging.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application is for outline planning permission for 3 dwellings, with all matters reserved. Illustrative plans have been submitted, and I have had regard to them so far as relevant.

Main Issues

3. These are:
 - a) Whether the proposal would be in a suitable location having regard to the development plan policies that govern the location of development,
 - b) The effect of the proposal on the character and appearance of the area,
 - c) Whether the proposal would provide a safe and suitable access for all highway users; and,
 - d) The effect of the proposal on biodiversity, with specific regard to protected species and biodiversity net gain.

Reasons

Location

4. Located on the south side of Ashby Road, on a row of ribbon development, the site is part of the eastern garden area of a large, detached house, 84 Ashby Road. The proposal is to erect 3 dwellings that would wrap around the side garden area of No 84, both to the side and rear. The indicative plans detail a dwelling to the rear of No 84, one to the east facing the side elevation of No

84, and the third fronting Ashby Road, sitting forward of No 84. An access road is shown running along the side of No 84.

5. The location of the development sits outside the defined 'limits to development' and is defined as countryside, in both the North West Leicestershire Local Plan (March 2021) (the LP) and the Blackfordby Neighbourhood Plan (made April 2022) (the NP). The site is clearly within the designated area for the NP, located to the edge of the northern boundary.
6. Policy S3 of the LP strictly limits development on land outside the 'limits to development', with the proposal failing to meet any of the exceptions. There would be an in principle policy harm to developing in this location, because it sits just outside the 'limits to development'. This would conflict with the requirements of Policy S3 of the LP. Policy H3 of the NP sets out criteria for infill and windfall developments, but as the proposal is not within the 'limits to development', it would also fail to meet this policy, despite being clearly an infill development.
7. However, Policy S2 of the LP sets out a settlement hierarchy, to be used when assessing the suitability of a settlement for new development, and to ensure that the type of development proposed is appropriate to the scale and character of the settlement and its place in the hierarchy. The supporting text details that the focus of the policy is to locate significant development in locations which are or can be made sustainable. It goes on to say that development at the bottom or outside the settlement hierarchy would inevitably require the use of private vehicles to access services and facilities, and such an approach is at odds with the aim of the National Planning Policy Framework (the Framework) and so is inappropriate. Policy G1 of the NP details that land outside the defined 'limits to development' will be treated as countryside, where development will be carefully controlled in line with local and national strategic planning policies.
8. The Council raise no objection to the sustainability of the development, given future residents would not be exclusively reliant on a private car to access services and facilities. This is owing to the bus route on Ashby Road and the street lit footpath providing suitable walking access to Woodville, the nearby urban area, subject to the provision of a pedestrian crossing point.
9. It also sits adjacent to the 'limits to development' of Woodville, which although in a different local authority area, is a settlement with plenty of services and facilities. Therefore, the location of this development would be in a sustainable setting, and thus it would be considered as a carefully controlled suitable location for development.
10. Consequently, whilst there would be an 'in principle' policy conflict with Policy S3 of the LP and H3 of the NP, there would be no conflict with the intentions of Policy S2 of the LP or G1 of the NP, nor the aims of the Framework. On balance, therefore, the proposal would be in a suitable location.

Character and appearance

11. The prevailing pattern of development along Ashby Road is large dwellings fronting the road, in elongated plots with large front and rear gardens. No 84 is set back further from the road than others in the row, and features a large side garden and scrub land, before Privet Cottage to the east.

12. Whilst the proposal is outline only, development of the plot would necessitate placing dwellings on angles, at both the rear, middle and front, similar to the indicative plans. This would be an efficient use of land, but would not reflect the existing prevailing strong pattern of development to the west.
13. In this edge of settlement location, developing an intense and densely packed housing scheme would be at odds with the surrounding layout. This would negatively affect the character and appearance of the area, appearing cramped and out of place.
14. However, development of the site would not unacceptably close the gap that currently exists between No 84 and Privet Cottage. The proposal would be infill development, and a reduction in the gap would not be harmful to the wider character and appearance of the area.
15. Whilst I understand there have been previous planning permissions for dwellings on the site, these have since lapsed. I must assess the proposal on the details before me and the policies at the time, taking account of the character and appearance of the area and other matters.
16. Furthermore, an outline planning permission is *the* planning permission, and I must be satisfied that the proposal could be acceptably accommodated on site. In this instance, the details before me do not persuade me that 3 dwellings could be provided in a suitable layout that was consistent with and sympathetic to the prevailing pattern of development.
17. Therefore, the proposal would have an unacceptable effect upon the character and appearance of the area. This would conflict with Policies D1, S3 and En3 of the LP and Policies G1 and H3 of the NP, which support developments that are well designed and reflect the character of the area within which it is situated. There would also be conflict with the North West Leicestershire Good Design Supplementary Planning Document, the National Design Guide and the Framework, which seek to achieve well designed and beautiful places.

Access

18. Access details are not presented for approval. However, I must be satisfied that safe and suitable access can be provided to the site as this would be the planning permission, as outlined above.
19. During my visit, which I acknowledge was a snap shot in time, I observed busy road conditions. This was not during any peak hours, and coupled with the 40mph speed limit and the use of the road as part of the Local Highway Authority's (LHA) Resilient Network and Major Road Network, it is important to ensure that any new access points are suitable for all highway users.
20. There is no evidence to demonstrate vehicle speeds to inform the visibility splays or to assess the suitability of a new access point. If vehicle speeds are more than 40mph, which is a suggested possibility by the LHA, they would seek to restrict new access for vehicles on this road, in line with Policy IN5 of the Local Highways Design Guide (LHDG). Therefore, it could be possible that the creation of a new access would be unacceptable in principle, depending upon the vehicle speeds, having regard to the LHDG.
21. Furthermore, given the lack of speed data, I cannot conclude if the indicative sightlines proposed would be suitable. Additionally, the details before me are

not drawn to scale, do not contain any topographical data and appear to be scanned copies. The sightlines that are drawn on the plan cut through land which is not in the highway nor red edge of the site. There are also visual obstructions, such as a telegraph pole and street lighting column that are not on plan.

22. Therefore, there is simply insufficient information to ascertain if access to the site could be safe, and as such, I must find that the proposal would fail to provide a safe and suitable access for all highway users. This would conflict with Policy IF4 of the LP, which seeks to ensure that development incorporates safe and accessible connections. There would also be conflict with the Framework, which seeks to ensure that safe and suitable access to the site can be achieved for all users.

Biodiversity

23. The land to the side of No 84 appeared as scrub, with little upkeep or maintenance, but the Council detail that there has been recent hedgerow and vegetation removal, and could have, or still could, provide a suitable environment for protected species. Therefore, there is a reasonable likelihood of species being present and affected by the development.
24. During the assessment of the planning application, no evidence relating to any assessment on biodiversity and ecology was presented by the appellant. However, the appeal has been accompanied by an Ecological Survey¹ and a Biodiversity Net Gain (BNG) Matrix². This was not highlighted in the appellant's statement of case, and the Council has not provided any comments in relation to these surveys.
25. Nonetheless, the Ecological Survey concludes that there is no potential for protected species to be using the development site. There were no limitations to the survey, and it was carried out by qualified ecologists. I have no reason to dispute these findings.
26. The BNG Matrix concludes that the site can achieve a 10% net gain in biodiversity on site and sets out methods to achieve this, although there would be little meaningful habitat creation due to the minimal amount required. That said, the report details that the gain in Biodiversity Units throughout the development will increase wildlife abundance in the area, i.e. birds, insects and small mammals. It also details that previous assessments of the site were used for reference for the BNG assessment of the habitat. I understand this means that the baseline position has taken account of the recent vegetation and hedgerow removal.
27. I have no reason to dispute the findings of the BNG Matrix. Furthermore, even if a 10% gain was not achieved, the Council has not provided a specific development plan policy which requires a minimum net gain in biodiversity, and the Framework simply seeks to provide a net gain. I am satisfied that a net gain could be achieved.
28. Therefore, the proposal would have an acceptable effect on biodiversity. This would be compliant with Policy En1 of the LP, which supports developments

¹ Dated 11 March 2024

² Dated 11 March 2024

that conserve, restore or enhance biodiversity. It would also comply with the requirements in the Framework that seek to protect and enhance biodiversity.

Planning balance and Conclusion

29. Whilst the proposal would be in a suitable location and have an acceptable effect upon biodiversity, the harm to the character and appearance of the area, and the failure to provide a safe and suitable access for all highway users is of substantial and determinative weight, such that there would be conflict with the development plan as a whole.
30. There are no other material circumstances that would indicate a decision other than in accordance with the development plan, and for the reasons set out above, the appeal is dismissed.

Katie McDonald

INSPECTOR