

Appeal Decision

Site visit made on 14 August 2024

by J Smith MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st November 2024

Appeal Ref: APP/M1005/W/24/3341942

Land off Hazelwood Hill, Hazelwood, Belper, Derbyshire DE56 4AD

- 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 Malcolm Sutton against the decision of Amber Valley Borough Council.
 - The application Ref is AVA/2023/0232.
 - The development proposed is for 27 dwellings which would comprise the following:
 - 2 bed semi-detached x 12 units
 - 3 bed semi-detached x 8 units
 - 3 bed detached x 1 unit
 - 4 bed detached x 6 units
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application is submitted in outline with details of layout and access provided for consideration. All other matters are reserved for future approval. I have treated all plans, other than those relating to layout and access as illustrative.
3. The site address varies between the application form and the appeal form. Both form accurate location descriptions, but for clarity, I have utilised the address found on the application form as set out in the banner heading.
4. The Church of St John the Evangelist is a Grade II listed building (1335374) on the opposite side of Over Lane from the appeal site. I have therefore had special regard to section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act).
5. The development plan for the area comprises the Amber Valley Borough Council Local Plan (2006) (the LP) and the Hazelwood Parish Neighbourhood Plan ('made' on 16 November 2016) (the NP). The LP was adopted before the National Planning Policy Framework (the Framework) but this does not mean that it should be regarded as out of date. However, any conflict with the 'saved policies' from the LP and policies in the NP may not attract full weight if

they are found to be inconsistent with the Framework. Where relevant I have returned to this issue below.

Main Issues

6. The main issues are:

- the effect of the proposal on the character and appearance of the area;
- whether the site would be a suitable location for housing;
- the effect upon the setting of a Grade II listed building known as The Church of St John the Evangelist;
- the effect on the significance of the former village school, former parsonage and the Memorial Hall of 1914-1919 as non-designated heritage assets (NDHA);
- the effect of the scheme on biodiversity; and,
- whether the development would increase flood risk.

Reasons

Character and appearance

7. Opposite the appeal site in this area of Hazelwood is a mixture of residential and community premises, such as a church, village hall and bowling green. Generally, residential properties are large, individual buildings which are set in sizeable plots laid out in an organic pattern of development. The appeal site and the buildings which make up the immediate locality of Hazelwood are separated by the highway, boundary walls and hedges. These separate the site by physical boundaries which are visually apparent. Significant clusters of residential dwellings do not form part of the character of the locality.
8. Despite the retained hedgerow and trees the proposed buildings would be visible, particularly during winter months when vegetation is not in full leaf. The site is also in a prominent area of land due to its position adjacent to the crossroads. This development is shown on the site layout plan. The layout of the proposed houses shown on the submitted plans is a closely packed urban form which would be at odds with the spacious and rural character of the area.
9. In addition, the appeal proposal and Hazelwood itself would be separated by the boundaries of the highway and boundary walls which surround the nearby church. There is a clear boundary between Hazelwood and the appeal site. As such, the development would appear isolated and be an awkward adjunct against the rural character of Hazelwood.
10. To conclude, the proposal would have a harmful effect on the character and appearance of the area. This would conflict with the requirements of Policies LS3 and EN7 of the LP. These policies require proposals to respect the character of the locality in terms of the scale and nature of development, its layout and density, whilst taking into account the relationship proposals would have with neighbouring buildings and the spaces around those buildings, amongst other things. The development would also conflict with Policy NP1 of

the NP. This policy requires proposals to conserve and enhance the rural character of the built environment and respect the high-quality landscapes in the vicinity.

Suitable location

11. Policy LS1 of the LP requires that development should be located taking into account a set of sustainability criteria. These include that it is well related to existing patterns of development and that it protects and enhances the quality of the built and natural environment. Policy NP1 also sets out criteria against which proposals for new housing are to be considered. These include that housing development conserves and enhances the rural character of the built environment and respects the landscape.
12. In these respects, I have already concluded that the development would be harmful to the character and appearance of area.
13. The appeal site is separated by the physical constraints of the highway and the boundary features located along it such as the stone walls and hedges. This separates the site from Hazelwood, even if it is geographically close to this settlement. Beyond the appeal site and moving away from Hazelwood, open fields are visible, and the countryside location is apparent. Unlike the appeal proposal, buildings along Hazelwood Hill and Over Lane are large and individual buildings set within their own grounds. As such, this development would also not be well related to the existing pattern of development and would appear as an encroachment into the countryside.
14. Policy LS1 of the LP is not consistent with the Framework. It does not facilitate development which is responsive to local circumstances, nor does it support housing developments that reflect local need. Furthermore, it does not allow for a consideration of the location of housing where it will enhance and maintain the vitality of rural communities. Therefore, the conflict which I have found in respect of Policy LS1 of the LP does not attract full weight.
15. However, Policy NP1 of the NP supports development which meets exceptional and demonstrable local housing needs of residents in the parish. Therefore, it is in accordance with the Framework and the conflict which I have found in terms of the impact on the character of the area attracts full weight.
16. To conclude, given my findings on character and appearance in the above main issue, the proposal would conflict with Policy NP1 of the NP. The proposal would also conflict with Policy LS1 of the LP as it would not be well related to the existing pattern of development. Due to the inconsistency of Policy LS1 with the Framework, the weight attached to this conflict with this policy is reduced.

Heritage – listed building

17. Paragraph 205 of the Framework states that great weight should be given to the conservation of an asset when considering the impact of a development proposal on the significance of a heritage asset. The statutory test which must be considered in these circumstances is that special regard shall be had to the desirability of preserving the building or its setting, or any features of special architectural or historic interest.

18. Opposite the appeal site on the other side of Over Lane is a Grade II listed church. The Church of St John the Evangelist (1335374) (the church) was built in 1846 and the listing refers principally to its design features. There is space around the church in the form of the graveyard and adjacent plots also generally have an open aspect. Its position on the edge of the built-up area and the fields beyond result in the church feeling part of the countryside. Consequently, the significance of the setting of the listed building, insofar as it relates to the appeal scheme, derives from the positive contribution the spacious, undeveloped nature of the appeal site makes to the openness and tranquillity of the setting of the listed church.
19. Whilst the proposal would not be within the grounds of the church and would be surrounded by extensive hedging with considerable separation distances, it would be read in the same context as the church. The contrast would be a modern built form with a large number of properties in contrast with the existing individual, unique and large grounds which encompass each building in the immediate vicinity. A development of this number of properties would work against the grain and pattern of its surroundings and as such, by virtue of its scale would disrupt the tranquillity of the open setting and would be detrimental to the setting of the listed building. It would thereby harm its significance as a heritage asset.
20. Given the scale of the development and its relationship with the church and its setting, the harm I have identified is less than substantial when assessed against paragraph 208 of the Framework. I will subsequently weigh this less than substantial harm against the public benefits of the proposal in the overall heritage and planning balance.
21. The proposal would therefore conflict with Policy EN24 of the LP. This policy states that new buildings within the setting of a listed building will only be permitted where the proposals contribute to preservation of the listed building and its setting, having regard to the elements which make up its special interest which include its character, appearance, scale and original function.

Heritage – non-designated heritage assets

22. The Council have cited Policy EN24 in their reason for refusal on this issue. In my assessment of this policy, the wording refers to the external alteration of a listed building or those within its curtilage, or development which is within the setting of a listed building. This policy does not discuss NDHAs. As such, I have had regard to the Framework on this main issue.
23. Located next to the church are the former village school, former parsonage and the Memorial Hall of 1914-1919. Constructed from stone, these buildings form a complex of buildings which are read in context with the church due to their proximity to it. When read in this context, these buildings play a strong and important role as community buildings. The Council describes the former school and, also implied, the former parsonage as NDHAs. The significance of the NDHAs is derived from their age, function and consistency of design and their relationship with the Church.
24. In common with its relationship with the Church and its setting, the proposal would be in stark contrast to the group of NDHAs by virtue of its urban form

and dense site layout. As such it would be harmful to the significance of the NDHAs.

25. To conclude, the proposal would conflict with paragraph 209 of the Framework which states that the effect of an application on the significance of a non-designated heritage asset should be taken into account and a balanced judgement will be required. I shall balance this judgement in the overall planning balance.

Biodiversity

26. The application was supported by a Preliminary Ecological Appraisal (dated December 2022) and Biodiversity Net Gain assessment. The Council notes that the assessment does not include a breeding bird survey and that there are inconsistencies in the assessment of great crested newts. The Council further suggests that the proposal would result in a net loss of habitat. The applicant has suggested that achieving a net gain could be possible on the adjacent fields, however, no further information on this matter has been provided.
27. It is essential that the presence of birds, great crested newts and other species which might be protected is established before planning permission is granted. It is important to understand the extent that they may be affected by the proposed development. As such, the provision of a completed, full ecological survey is necessary prior to the submission of a planning application. It is important to understand the ecological presence on site and the impact of development. The proposal is not adequately informed by the ecology presence within the appeal site and as such, does not appropriately mitigate and compensate for the possible loss of biodiversity.
28. Planning conditions have been set out by the Council in the event the appeal was allowed. The conditions include the submission of an updated Biodiversity Metric and Strategy, a Construction Environmental Management Plan, and a Landscape and Biodiversity Enhancement and Management Plan, a Species Enhancement Plan and a Lighting Strategy. A further condition suggests that works should be restricted during certain months, unless a bird survey is provided. However, the need to ensure surveys are carried out should only be left to coverage under planning conditions in exceptional circumstances. From the evidence before me, it is not considered that these exceptional circumstances exist.
29. To conclude, the proposal would have an unacceptable effect on biodiversity. As such, the proposal would conflict with Policy EN13 of the LP which states that development will not be permitted which would have an adverse impact upon protected species. The proposal would also conflict with Policy NP5 of the NP which states that development should seek to conserve or enhance the biodiversity value of the plan area and also must include native hedgerows on site boundaries.

Management of flood risk

30. Policy EN15 of the LP states that planning permission will only be granted for proposals which would have no adverse effect on the management of flood

risk. The appeal site is located in Flood Risk Zone 1. As such, there is a low risk of flooding in this locality.

31. The application was supported by a Surface Water Drainage Strategy which refers to the potential for Sustainable Drainage Systems (SUDS) to be incorporated into the final site layout to deal with surface water drainage. However, the site layout is not a reserved matter, and the appellant has not demonstrated how sustainable drainage methods could be incorporated into the scheme to provide multifunctional benefits as suggested by the Council.
32. Given that the site layout would be established by an approval of the appeal scheme it would not be appropriate to secure full details of SUDS via a planning condition. This is because such a condition has not been shown to pass the tests of reasonableness and enforceability.
33. Therefore, on the basis of the information before me, it has not been demonstrated that appropriate Sustainable Drainage Systems can be delivered. For the reasons set out above the proposal would conflict with Policy EN15 of the LP.

Heritage and Planning Balance

34. The harm to the Grade II listed church of St John the Evangelist which I have identified as a result of the proposed development would be less than substantial. Paragraph 208 of the Framework states that where there is less than substantial harm to the significance of a heritage asset, this harm should be weighed against the public benefits of the proposal.
35. Although the Council can demonstrate a five-year supply of housing, 27 additional dwellings would boost housing supply which is generally supported by government policy. Given the scale of the development this attracts moderate weight in favour of the development. The appellant confirmed during the Council's consideration of the application that nine of the houses would be affordable homes. In the absence of any mechanism to secure this affordable housing, it attracts limited weight in favour of the development.
36. In consideration of other aspects of the proposal, a play area would be provided which would benefit the development and the wider community. The provision of affordable housing, which could be occupied by local workers, has the potential to reduce travel for work. The proposal would also result in construction employment and its future occupiers would use the shops and services in the local towns and generate council tax receipts. The proposal would also implement sustainable building methods and materials. I attach moderate weight to these economic and social benefits.
37. However, the public benefits arising from the increase in the supply of housing including affordable housing and the economic and social effects would not outweigh the harm to the setting of the listed building and the considerable importance and weight that this carries. I have identified the benefits of the appeal scheme as part of the assessment of public benefits in undertaking the necessary balancing exercise in relation to the Grade II listed church.
38. The proposed development would harm the character and appearance of the area and the setting of a Grade II listed church and non-designated heritage

assets. Furthermore, it has not been demonstrated that the development could be carried out without giving rise to an unacceptable impact on biodiversity or increasing flood risk. The site is also not an appropriate location for housing but the conflict with Policy LS1 of the LP in this respect does not carry full weight. However, there is a broad thrust of consistency with the aims of the Framework. The Framework does suggest that proposals should be approved as sustainable development unless its adverse impacts clearly outweigh its benefits. The benefits of the scheme do not outweigh these harms.

39. This leads me to an overall conclusion that the appeal scheme would not accord with the development plan, when considered as a whole, and I find that the adverse impacts of the proposal are matters of great weight against the grant of planning permission that outweigh the stated benefits.

Conclusion

40. For the reasons given above, I conclude that the development conflicts with the development plan and there are no material considerations that outweigh this conflict. Therefore, the appeal is dismissed.

J Smith

INSPECTOR