



Appeal Decision

Site visit made on 20 March 2025

by N Duff BSc (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th July 2025

Appeal Ref: APP/M1005/W/24/3356974

Land at end of Poyser Lane, Kirk Langley DE6 4LR

- 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 Lyttel against the decision of Amber Valley Borough Council.
- The application Ref is AVA/2022/0688.
- The development proposed is proposal for development of 3 residential dwellings with all matters reserved.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The National Planning Policy Framework (the Framework) was revised in December 2024 which was published following the submission of the appeal. The main parties have been given the opportunity to comment on the revisions and neither party has chosen to comment.
3. The site access appraisal¹ provided with the appeal states that 'the development would comprise up to 10 dwellings'. However, it is my understanding that the development proposal is for 3 dwellings as set out in the remainder of the evidence including application forms and the decision notice, therefore I have proceeded on this basis.

Main Issues

4. The main issues are:
 - The effect of the proposed development on highway safety with particular regard to the junction of Poyser Lane and Moor Lane;
 - The effect of the proposed development on below ground archaeology with particular regard to the 'Section of Roman road to the north-east of Moor Lane, Kirk Langley' Scheduled Monument²; and
 - The effect of the proposed development on ecology.

¹ Site Access Appraisal October 2017, Bancroft Consulting.

² List entry number 1462649

Reasons

Highway safety

5. The appeal site is a field at the end of and accessed from Poyser Lane, an unadopted road off Moor Lane. Moor Lane is a 40mph road in Langley Common located to the south of Kirk Langley. A public right of way extends down Poyser Lane and then passes within however down the side of the appeal site.
6. The junction of Moor Lane and Poyser Lane is basic in design, narrow, and at the time of my visit had no road markings or streetlighting, however has been in use for many years to access the dwellings along both sides along a narrow Poyser Lane. Some of the dwellings along Poyser Lane do not appear to have off street parking. I witnessed some parked cars along Poyser Lane which made it effectively single track. The junction has a property on the southern corner of the junction with a low boundary wall, which sits outside of the appeal site.
7. The proposal seeks outline permission for 3 dwellings with all matters reserved, however some details of access have been provided on an indicative layout, both from the main road, Moor Lane, and from the end of Poyser Lane demonstrating how the lane would connect to the appeal site. The site access appraisal submitted is dated October 2017. Whilst certain elements of this have been explained further in a more recent document, the initial appraisal is the main document upon which the appellant relies, even though it considered a scheme of 10 dwellings. However, whilst it did account for a larger development, due to the passage of time I cannot be certain that those levels of traffic captured in the survey are reflective of current levels of traffic in the area and I cannot be certain of the accuracy of the findings.
8. According to the Council's highway advisor the road conditions are not considered to be of low speed or lightly trafficked. Based on the information before me I agree with this analysis. Therefore, a visibility splay of 103m to the left is considered necessary due to the speed limit of Moor Lane at 40mph. Based on the information before me I agree with this analysis. The plans before me show visibility splays significantly lower than the required amount, therefore in my view, visibility to the left is insufficient to allow vehicles egressing the junction onto Moor Lane, and for oncoming vehicles to see cars pulling out of Poyser Lane until being somewhat close by, even if the warning sign were to be repositioned to the other side of the junction aiding visibility marginally. I am satisfied, based on the information before me, that the visibility to the right is sufficient.
9. Notwithstanding this, due to the narrowness of the junction and Poyser Lane itself, I have concerns that should vehicles meet at this point, vehicles may either have to wait on the main road, or vehicles would be forced to reverse back up Poyser Lane. This conflict with vehicles could cause significant highway safety issues particularly for other vehicles or pedestrians, as there is no pavement along Poyser Lane and it is a public right of way. The evidence states that refuse vehicles currently reverse up Poyser Lane to service the properties and this would remain the case, nevertheless I have further concerns regarding the access to the proposed development for emergency vehicles and other larger vehicles due to the narrowness of the access. Whilst I note the inclusion of turning areas within the appeal site that would allow vehicles to leave Poyser Lane in a forward gear, which would be beneficial, this would be within the driveway of proposed dwellings

and could be used for parking by residents, therefore may not be readily available for public use for manoeuvring, therefore this would not adequately overcome my concerns as they rest principally with the safety of the junction at the point of access onto Moor Lane.

10. To my mind, the use of the access would intensify as a result of the development, by increasing the number of dwellings accessed along Poyser Lane, through higher levels of comings and goings from residents including other vehicles such as delivery vehicles.
11. Crashmap data that covers over 20 years has been submitted as part of the appellant's evidence, which demonstrates that no reported accidents have occurred at this junction. However, given my concerns set out above, I find that the access arrangements together with the increased comings and goings to and from the site would harm highway safety as it would, in my view, unacceptably increase the risk of accidents.
12. Several enhancements to highway safety have been suggested in the Highways Safety Statement, not limited to, reducing the speed limit of Moor Lane, creating a central island, and marking the junction on Moor Lane. These appear as options and lie outside of the appeal site and do not, in my view, form part of the plans and neither do they form part of the Council's analysis in the officer report, therefore do not affect the conclusion I have reached.
13. For the above reasons, due to the intensification of the access and the poor access arrangement onto Moor Lane, I conclude that the proposal would have an unacceptable impact on highway safety with particular regard to the junction of Poyser Lane and Moor Lane contrary to saved policy TP1 of the Amber Valley Borough Local Plan (2006) (AVBLP), which seeks to ensure that satisfactory access can be obtained to the highway network. The proposal would also not accord with paragraph 116 of the Framework as the proposal would have an unacceptable impact on highway safety.
14. Policy TP6 of the AVBLP relates to car parking for the proposed development, this does not directly link to the harm identified in this issue and therefore I find no specific conflict with Policy TP6 when reaching my conclusion on this main issue.
15. For the above reasons the proposal would also be contrary to Paragraph 115 of the Framework which states that for applications for development it should be ensured that safe and suitable access to the site can be achieved for all users.

Archaeology

16. The appeal site is located to the north of and near to the 'Section of Roman Road to the north-east of Moor Lane, Kirk Langley' Scheduled Monument (SM), a designated heritage asset. The significance of which is derived from it forming part of a network of roads created by the Roman army after AD43. This part of the Roman road was revealed by archaeological investigation, which confirmed the presence of nationally important deposits harbouring evidence of its construction. Contributing to a network of roads established by the Romans which constitutes a major feat of engineering and is seen as one of the most distinctive legacies of the Roman occupation of Britain. This section of road at Kirk Langley is the only section to have been identified between Rocester and Derby and is a very rare survival.

17. The Council's archaeological adviser has stated that due to the proximity of the proposed development to the Roman road could mean that associated settlement/activity may occur and that finds of Roman pottery and metal artefacts have been recorded frequently on land to the north and south of the nearby Long Lane. Therefore, the appeal site could make a contribution to the significance of the SM, even though the SM is underground.
18. The site forms part of the 1996 Derbyshire Historic Landscape Character Assessment and is defined as an enclosure with little loss of boundaries between 1848 and 1997, fields immediately to the north reflect medieval strip fields which are considered to be a remnant of an enclosed open field system, and the remaining field boundaries which define the proposed development site represent a relatively rare survival of part of a very early field system. The Council's adviser on archaeology has stated that due to evidence from LiDAR and historical map analysis, the proposed development would sit in an area in which the presence of archaeology is already attested. Therefore, to my mind the appeal site is likely to contribute to the significance of the historic landscape.
19. Given the lack of a geophysical survey and archaeological evaluation through trial trenching it has not been adequately demonstrated that there would not be harm to the SM or the wider historic landscape. Based on the importance of the historical information relating to the site and its surroundings, I agree with this conclusion. Furthermore, paragraph 207 of the Framework states that in determining applications, where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation. Therefore, the proposal does not accord with paragraph 207 of the Framework in this regard.
20. Due to the absence of any archaeological supporting information from the appellant, at the planning application or appeal stage, I cannot be certain that the proposed development would cause no harm to the SM or indeed that the site itself is not of archaeological importance.
21. The appellant has stated that this information could be requested by condition, however, given my concerns regarding archaeology I need to take a precautionary approach, I consider that this information is required in order to make an informed decision regarding the proposed development on the nearby SM, and the historic landscape in which the appeal site is located. In my judgement the omission of this information is an important factor in whether outline planning permission would be acceptable.
22. Paragraph 212 of the Framework states that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.
23. Accordingly, in this case I cannot be certain that the proposed development would not cause harm of some degree to the significance of the nearby SM and indeed the level of harm is unknown, and I am not satisfied that the policy requirements have been met. Therefore, in my view, the proposal would conflict with saved Policies EN30 and EN31 of the AVBLP which between them seek to ensure that

planning permission will not be granted for development proposals that would result in disturbance to or have an adverse impact on a Scheduled Ancient Monument or other nationally important archaeological remains or their setting or any other known archaeological or heritage features of major importance and their settings, and for development proposals likely to affect a site containing archaeological remains of less than national importance where the application is supported by an assessment and if necessary an archaeological field evaluation.

24. For the reasons mentioned above I am not satisfied that there is a clear and convincing justification for the appeal scheme in relation to the harm of the significance of the asset. Therefore, it would not meet the requirements of paragraph 213 of the Framework.
25. In accordance with paragraphs 214 and 215 of the Framework, the harm should be weighed against the public benefits of the proposal. I turn to this in my overall planning balance.

Ecology

26. The appeal site is a greenfield site and forms part of a wider parcel of land, and does not appear to be actively farmed, with mature hedgerows along its east and west boundaries of the site outlined in red. Therefore, in my view, it is likely that the appeal site could have ecological value. The appellant has stated that the area demarcated by the blue line on the plans could be retained together with hedgerows to offset potential ecological impacts.
27. The planning application and subsequent appeal have not included an ecological assessment by an accredited individual, and based on the indicative layout, the proposed development would take up a significant proportion of the site.
28. The Council's adviser on ecology has referred to the requirement for the information to be provided with the application or appeal to be satisfied that the proposal would not have an unacceptable effect on protected species that may reside on the site, and the suitability of the site for protected species has not been assessed by a professional ecologist.
29. The appellant has stated that the survey could be conditioned and that a survey could expire prior to submission of any reserved matters application and may need to be refreshed resulting in additional cost, however, the need to ensure ecological surveys are carried out should only be left to coverage under planning conditions in exceptional circumstances³. The appellant has not adequately demonstrated that there are sufficient exceptional circumstances to justify the absence of a survey. Therefore, in my view, an ecological survey even in a preliminary form should have been provided at outline stage notwithstanding the area to the south outlined in blue retained for ecological purposes.
30. The Council's adviser on ecology has referred to the potential requirement for Biodiversity Net Gain (BNG). However as set out in the Planning Practice Guidance (PPG)⁴ BNG has only been commenced for planning permissions granted in respect to an application made on or after 12 February 2024. Permissions granted for applications made before this date are not subject to BNG. Therefore, in this case the requirement for BNG does not apply due to the

³ Paragraph 99 of Circular 06/2005

⁴ Para 003 Reference ID: 74-003-20240214

date the planning application was originally submitted to the Council. This aligns with the omission of BNG requirements in the Council's officer report.

31. To conclude and for the reasons mentioned, I must take a precautionary approach and due to the absence of ecological information, I am not satisfied that the proposal would have an acceptable effect on ecology. Therefore, I am not satisfied that the requirements of saved Policy EN13 of the AVBLP or Policy ENV3 of the KLNDP have been met, which between them seek to ensure that development will not be permitted which would have an adverse impact upon protected species and for new developments to protect and enhance biodiversity.
32. For the above reasons I cannot be certain that the requirements of paragraph 193 of the Framework have been met, which states that if significant harm to biodiversity resulting from development cannot be avoided, adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.

Other matters

33. A previous planning application at the site has been brought to my attention by the appellant, this proposed 12 dwellings, it is stated in the appellant's appeal statement that the application raised relevant issues, however due to the size of the site was withdrawn. Whilst the current scheme is much reduced in size, due to the matters raised in the main issues, this presence of this application at the site does not lead me to a different conclusion.
34. The appellant's planning statement suggests that the site is within the designated Historic Park and Garden at Kedleston Hall. There is limited substantive evidence before me to adequately demonstrate that it is within the Registered Park and Garden, moreover the Council has not indicated concerns regarding this and I find no reason to disagree with its conclusion on this matter.

Planning and heritage balance

35. A public benefit of the proposal is that it would contribute to housing land supply by creating 3 additional dwellings and would not be within a conservation area or within the Green Belt. The proposal would contribute to the Council's housing land supply. Therefore, the scheme would provide housing to boost housing supply and is a worthwhile benefit and would make a small contribution to maintaining a housing land supply.
36. A public benefit put forward of the proposal is that the area outlined in blue could be retained for ecological offsetting purposes together with retention of hedgerows and hedgerow trees as a communal area. In addition to this, new planting for proposed dwellings would make use of local species of flora to retain and enhance the natural character of the area whilst promoting the creation of new habitats for local fauna and the scheme could make use of SUDs where practicable.
37. A turning area would be provided by the proposed development within the appeal site and has been put forward as a public benefit, however this appears to be as part of the driveway to one of the dwellings and could be parked on by residents and may not be readily available for public use.
38. The public right of way would be retained and the appeal site being in flood zone 1 with the lowest probability of flooding and no objections on such grounds from the Council or from relevant statutory bodies.

39. The age of the Council's local plan, the AVBLP, has been brought to my attention in the appellant's and Council's evidence, in that the Council relies upon saved policies from the AVBLP, together with the KLNDP and the Framework. The appellant states that the Local Development Plan is out of date. However, it is established in the Framework that existing policies should not be considered out-of-date simply because they were adopted prior to the publication of the Framework, and that due weight should be given to them according to their degree of consistency with the Framework. The Council's evidence implies that certain policies relating to location may be out-of-date due to their consistency with the Framework.
40. However, I am satisfied that the policies put forward in the reasons for refusal regarding transport, archaeology and ecology are broadly consistent with the Framework and therefore form part of the development plan. Even if I were to consider the location of development and found those policies to be out of date, the grant of planning permission, in my view, would not be appropriate due to footnote 7 of the Framework. Which states that, decision taking means granting permission unless the application of policies in the Framework that protect areas of assets of particular importance, including designated heritage assets and other heritage assets of archaeological interest, provide a strong reason for refusing the development proposed.
41. Therefore, notwithstanding the date of the AVBLP, due the consistency of the policies with the Framework put forward in the reasons for refusal, I am satisfied that those policies are not out-of-date for these purposes, and therefore the conflict with those policies in my assessment of the main issues attracts significant weight in the overall planning balance, in this case.
42. There would be public benefits of the scheme as outlined above. However, due to the small number of dwellings provided, the benefits are only afforded limited weight in terms of approval and in the absence of the required archaeological information, I cannot be certain that the proposal would not cause harm to the significance of the SM and the public benefits would not outweigh this harm. This is a matter to which I attach significant weight and importance in the overall planning balance.
43. In addition, there would be harm with regards to highway safety, this is a serious shortcoming of the proposal in this location because of the likely effects on the junction of Moor Lane and Poyser Lane due its intensification. There would also be harm due to the absence of an ecological survey, without such information it is not possible to establish what effect the proposal could have on protected species and what mitigation could be provided. These are matters to which I attach significant weight.
44. Therefore, the public benefits of the scheme do not outweigh the harm I have identified in relation to the policy conflicts in the main issues to which I attach significant weight.

Conclusion

45. The proposal conflicts with the development plan when considered as a whole and the material considerations do not indicate that the appeal should be decided other than in accordance with it. For the reasons given above the appeal should be dismissed.

N Duff

INSPECTOR