



Appeal Decision

Inquiry held between 23 and 25 February 2016

Site visit made on 24 February 2016

by Nick Palmer BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 13 April 2016

Appeal Ref: APP/F1040/W/15/3121527

Land east of Newton Road, Winhill, Burton-upon-Trent, South Derbyshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Barratt Homes North Midlands against the decision of South Derbyshire District Council.
 - The application Ref 9/2014/1039, dated 29 October 2014, was refused by notice dated 4 June 2015.
 - The development proposed is up to 100 dwellings, including open space, access and associated service infrastructure.
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Decision

1. The appeal is allowed and planning permission is granted for up to 100 dwellings at land east of Newton Road, Winhill, South Derbyshire in accordance with the terms of the application, Ref 9/2014/1039, dated 29 October 2014, subject to the conditions set out in the attached schedule.

Procedural Matters

2. The application is for outline planning permission with all detailed matters apart from access reserved. I have considered the proposal on this basis.
3. An illustrative master plan was submitted with the application and subsequently amended. I have considered the amended plan on the basis that it is illustrative of a possible layout.

Main Issues

4. From all that I have read, heard and seen I consider the main issues in the appeal to be:
 - i) the effect of the proposed development on the character and appearance of the area;
 - ii) the contribution that the proposal would make to housing supply; and
 - iii) whether the proposal would accord with the presumption in favour of sustainable development having regard to its accordance with the development plan and the economic, social and environmental dimensions of sustainable development.
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Reasons

Character and Appearance

5. The appeal site is open agricultural land consisting of two fields to the immediate north of Winshill which is a suburb of Burton upon Trent. The site is separated from the built up area by Dale Brook which forms a clear natural boundary feature including a number of trees. To the west of Newton Road is the open valley of the River Trent. The land levels rise on both sides of Dale Brook and fall towards the River Trent.
6. There are hedgerows along both sides of Newton Road which has a distinct rural character north of the built up area. A dwelling (Keepers Cottage) is adjacent to the road frontage and the south western part of the site and there is a large 19th century building (Bladon Paddocks) to the north. To the rear of that building are some former farm buildings which are included in the site.
7. The landscape to the east of Newton Road forms part of the Melbourne Parklands Landscape Character Area (Estates Farmlands) in the County Council's landscape character assessment¹. The rising landform away from Dale Brook, the hedgerows along the field boundaries and the trees along the brook are typical of the Estates Farmlands landscape character. Bladon Paddocks and Keepers Cottage are consistent with the rural character of the area.
8. The rising land away from Winshill and in relation to the Trent valley gives the site prominence in the wider landscape. The site is visible at a distance from Burton upon Trent on the other side of the valley as well as from the residential area of Winshill. This combined with the clear separation of the site from the built up area and its distinct character gives the site some scenic value.
9. The boundary hedgerows are typical landscape features and the central hedge dividing the two fields is likely to be of historic interest in that it appears to pre-date the field enclosures of the 18th century. The central hedgerow would be substantially retained within the illustrative layout shown on the master plan and the hedges along the road frontages would be either retained or replanted.
10. For these reasons I consider that the site has some value as a landscape but that it is not exceptional in this respect. The site is representative of the landscape character but does not have rarity. The County Council² has assessed the landscape as being unified and coherent but that it is of secondary sensitivity. The Council's Landscape and Visual Impact Assessment³ considers that the landscape has medium susceptibility to change.
11. For these reasons the landscape does not warrant protection in terms of its sensitivity. The site is not out of the ordinary in terms of its landscape value and thus is not a valued landscape which requires protection in accordance with paragraph 109 of the National Planning Policy Framework (the Framework).
12. It would be necessary to leave an open margin adjacent to the brook to avoid the easement for the gas main which runs adjacent to the brook. The

¹ Landscape Character of Derbyshire (2003)

² Derbyshire County Council Technical Support Document 1: Areas of Multiple Environmental Sensitivity (2013)

³ TEP Landscape and Visual Impact Assessment paragraphs 2.51 and 4.3

- illustrative layout indicates wide areas of open space adjacent to the brook and the road frontage. The layout would differ from that of the urban area and would be set back from the historic buildings on Newton Road. However I see no reason why this aspect of the proposal would be harmful to the character and appearance of the area and indeed the generous areas of open space would give a more open character in relation to the adjacent countryside.
13. The function of the central hedgerow as a field boundary would clearly be altered as would its setting in the landscape but the illustrative layout shows this to be incorporated within a central area of open space. This historic landscape feature would still be legible as such and there is no evidence that its longevity would be prejudiced.
 14. The proposed footway works may affect the hedges along the road frontages but the appellants propose to translocate or replant the hedges where necessary. The land on the western side of the road falls away but I saw on my visit that there appears to be adequate space to replant or translocate.
 15. The proposal would include mitigation in the form of the open space areas and new planting to be provided. However the proposed development would significantly affect the character and appearance of the area by extending the urban area into the countryside. The proposal would result in significant visual change to the site which would be widely visible. Although I find that the landscape does not have sufficient value to warrant protection, I also find for the above reasons that the proposal would be harmful in terms of its effect on the character and appearance of the area. Taking into account the visual prominence of the site I give significant weight to that harm.
 16. The site is outside the defined settlement boundaries in the South Derbyshire Local Plan (LP) (1998) where saved Policy EV1 of the LP restricts new development unless it is unavoidable. Part A (iii) of that policy requires that the character of the countryside and the landscape quality are safeguarded and protected. That policy is not entirely consistent with the Framework in as much as paragraph 109 only requires the protection of valued landscapes. However its aim in general terms remains consistent with paragraph 17 of the Framework which requires the recognition of the intrinsic character and beauty of the countryside. For the reasons given the proposal would not accord with saved Policy EV1.
 17. The South Derbyshire Submission Local Plan Part 1 (LPP1) is at an advanced stage in its adoption process, having been subject to examination. The Council has indicated that Policies BNE1 and BNE4 of that document are likely to be adopted in their current form. In accordance with paragraph 216 of the Framework significant weight can be given to those policies.
 18. Policy BNE1 of LPP1 requires well designed development that responds to context and has regard to valued landscape. Policy BNE4 of LPP1 requires the protection and enhancement of the landscape through careful design and restricts development that would have an unacceptable impact on landscape character, visual amenity and sensitivity that cannot be satisfactorily mitigated.
 19. The layout and design of the development are not matters for consideration but the illustrative layout demonstrates regard for the existing landscape features of the brook, trees and hedgerows. For these reasons the proposal would

accord with Policy BNE1 and in part with Policy BNE4 of LPP1. However the proposal would conflict with Policy BNE4 in terms of its visual impact.

Housing Supply

20. The Council accepts that it cannot demonstrate a five year supply of deliverable housing sites. There is currently a 4.2 year supply but the Council says that this will increase to over 5 years on adoption of LPP1 which is expected in May 2016. The appellant questioned the likelihood of the May adoption date and considered that this is more likely to be June or July taking into account possible objections in relation to a strategic allocation at Mickleover.
21. The identified annual housing requirement in the Council's trajectory is 1,295 dwellings per annum which is a step change from previous delivery rates. The Council has provided recent examples of developments which support its view that it is working towards this higher level of provision. There are also a number of outstanding planning applications and appeals which if approved would add to housing land supply. However if the annual requirement is not achieved this would have the effect of increasing the deficit.
22. It may be the case that the Council will be able to demonstrate a five year supply of deliverable housing sites in the near future. However that possibility is far from certain. Given that the supply is some way short of five years at the present time the proposed development would in terms of the number of dwellings proposed make a significant contribution to housing supply. The Framework⁴ requires local planning authorities to boost significantly the supply of housing. For these reasons I attach significant weight to the benefit of the proposal in helping to address the shortage in housing land supply.

Sustainability

23. The site is said to be between 1.1km and 1.9km from local facilities in Winhill and 2km from the centre of Burton upon Trent. The local facilities include a convenience shop, primary school, high school and medical centre. Pedestrians would need to cross Newton Road and then cross back again but footpaths and crossing points are to be provided on both sides of the road. The road has a 40 mph speed limit and local residents say this is often exceeded. The local facilities are within walking distance but it is also likely that many residents would use their cars. The site has a reasonably good level of pedestrian access and the Highway Authority has no objection in terms of pedestrian safety.
24. The site would also have good accessibility by bicycle to the urban area and by public transport given that there are regular bus services along Newton Road. For these reasons the proposal would accord with paragraph 17 of the Framework in terms of making the fullest possible use of public transport, walking and cycling.
25. The illustrative master plan shows a potential footpath link between the development and Brookside. This provision may be funded by means of the contribution to be secured by the planning obligation but it cannot be relied upon because of uncertainty regarding the ownership of the land off Brookside.

⁴ Paragraph 47

26. The proposal would enable residents to support local services and the construction of the development would be of benefit to the local economy albeit for a temporary period.
27. The provision of new housing including a mix of housing types and affordable housing would be beneficial in the context of the identified shortfall. The generally good level of accessibility to services and facilities would be beneficial socially.
28. The site is indicated to be of very good agricultural land quality (Grade 2) on the Natural England Agricultural Land Classification map. However no detailed evidence has been presented in this respect. The loss of agricultural land does not form part of the reason for refusal and the Council indicated⁵ that its loss would not be significant in relation to the total area of Grade 2 land available. However the loss of good quality agricultural land weighs against the proposal both environmentally and economically.
29. I have found that there would be harm to the character and appearance of the area and in this respect the proposal would not meet the environmental dimension of sustainable development. However the accessibility to services by means other than the car would accord with the environmental dimension. Protected species surveys were submitted with the application. The proposal would include an area of open space along its southern boundary and adjacent to Dale Brook which would provide a wildlife corridor. Subject to the imposition of conditions to safeguard habitats the proposal would have no adverse effect on biodiversity.
30. There is an easement adjacent to the gas pipeline through the southern part of the site within which development is restricted. The proposed wildlife corridor would coincide with that easement. It has also been demonstrated that the development would not be adversely affected in terms of flood risk given that it would be sited away from the areas at risk of flooding from Dale Brook.
31. Overall, considering these matters in the round the development would accord with the economic and social dimensions of sustainable development but there would be some harm in respect of the environmental dimension.

Other Matters

32. The Highway Authority has no objection to the proposal in terms of highway safety and I see no reason to disagree with that conclusion.
33. Local residents in objecting to the proposal have the support of their Member of Parliament. I have had regard to all other matters raised but those matters do not alter my conclusions on the main issues.

The Unilateral Undertaking

34. The Unilateral Undertaking would secure affordable housing, the provision of open space and a balancing pond and financial contributions towards outdoor and built sports facilities, transport infrastructure to be provided as part of the Burton Integrated Transport Strategy, primary and secondary schools and the monitoring of the submitted Travel Plan. Because the educational, transport and recreational needs arising from the development would relate to the

⁵ Mr Nash XX

adjacent urban area which is in Staffordshire the Council has agreed with East Staffordshire District Council and Staffordshire County Council that the financial contributions would be transferred to those authorities.

35. The need for improvements to education, sports and highway infrastructure arising from the development has been explained by East Staffordshire District Council and Staffordshire County Council. The financial contributions have been calculated using standard methodologies.
36. The Council has confirmed that in respect of all financial contributions the restriction on the number of pooled contributions as set out in the CIL Regulations⁶ would not be exceeded.
37. The affordable housing provision is necessary to meet the Council's policy requirement. The open space is necessary to provide for the future residents' recreation. The balancing pond is necessary in order to provide for the sustainable drainage of the site.
38. The Travel Plan would require monitoring by the County Council. Because this would require annual audits of performance including liaison with the Travel Plan coordinator the contribution towards monitoring would be justified.
39. For these reasons the obligations contained in the Unilateral Undertaking are necessary and meet the other tests in regulation 122 of the CIL Regulations.

Planning Balance

40. I have found that there would be significant harm to the character and appearance of the area and I give significant weight to this consideration. I also give limited weight to the harm arising from the loss of good quality agricultural land.
41. The measures to be secured by the Unilateral Undertaking other than the affordable housing are neutral in the planning balance because they would offset the impacts of the development.
42. There would be no harmful effects in terms of highway safety, flood risk or proximity to the gas pipeline and these aspects should also be considered as neutral in the balance.
43. The proposal would be of significant benefit in addressing the identified shortfall in housing supply. There would also be significant benefit arising from the affordable housing provision.
44. I have found that the proposal would meet the social and economic dimensions of sustainable development. There would be harm in terms of the environmental dimension but also some benefits in this respect. Overall the economic, social and environmental gains would outweigh the harm to these dimensions of sustainable development.
45. It is common ground between the main parties that in the absence of a five year housing land supply, policies for the supply of housing are not up-to-date. To the extent that Policy EV1 of the LP restricts housing development outside settlements it is a policy for the supply of housing.

⁶ Community Infrastructure Levy Regulations 2010 regulation 123 (3)

46. Paragraph 14 of the Framework states that where policies are absent, silent or out-of-date, permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework as a whole.
47. The significant and limited weights that I have given to the identified harms do not outweigh the two significant weights that I give to the benefits of the proposal. The adverse impacts of granting permission do not therefore significantly and demonstrably outweigh the benefits of doing so.
48. The proposal would not accord with saved Policy EV1 of the LP or with Policy BNE4 of LPP1. I give reduced weight to Policy EV1 reflecting its lack of consistency with the Framework. Also, although I give a significant level of weight to Policy BNE4 given its advanced stage, it cannot carry full weight because it is not part of the development plan. Although I have found some conflict with the development plan the above material considerations indicate that permission should be granted.
49. Considered as a whole the development would be sustainable for the reasons given.

Conditions

50. I have had regard to the tests in paragraph 206 of the Framework in imposing conditions. A list of conditions was agreed in broad terms between the main parties subject to a number of detailed comments. I have imposed those conditions subject to some changes as set out below.
51. Condition 4 sets out requirements in terms of reserved matters. The matters included are necessary to ensure that the detailed scheme provides open space, landscape planting, play facilities, details of levels and refuse bins and that access and parking arrangements are acceptable.
52. The Council requested that the details to be submitted under reserved matters should include at least one SuDS pond designed to permanently hold water. I appreciate that such ponds may be of value for biodiversity but no specific evidence has been provided to justify this requirement, including in the responses from the County Council and the Environment Agency. In the absence of specific justification such a requirement would not be necessary.
53. The Council also requested that details of phasing be submitted under reserved matters. The provision of the open space and its phasing is covered by the Unilateral Undertaking and I see no need to include a requirement to approve the phasing of the residential development.
54. Condition 5 is necessary to ensure that nesting birds are not adversely affected by construction works. Condition 6 is necessary to ensure that the development is not at unacceptable risk of flooding. Condition 7 is necessary to ensure hedges are protected during construction and that any translocation of hedges is controlled.
55. Condition 8 is necessary to ensure that barn owls are protected during the construction period. Condition 9 is necessary in the interests of highway safety and living conditions.

56. The Highway Authority requested the approval of details of a temporary access for construction purposes separately to the requirement to obtain full approval for the main proposed access. The appellant explained at the Inquiry that the main access would be constructed and used as the means of access for construction purposes and I see no reason to impose a separate condition in this respect.
57. Condition 10 is necessary in the interest of the health of the future occupants. Conditions 11 and 12 are necessary to ensure that the development meets the required standards in terms of sustainable drainage and to avoid pollution.
58. Condition 13 is necessary in the interest of biodiversity. Condition 14 is necessary in the interest of highway safety. Condition 15 is necessary to encourage sustainable travel.
59. Finally condition 16 is necessary to ensure that the approved landscaping is carried out in a timely manner. The Council requested a ten year establishment period for the planting scheme but five years would normally be adequate for this purpose and no specific evidence has been put forward to justify a longer period.

Conclusion

60. For the above reasons I conclude that the appeal should be allowed.

Nick Palmer

INSPECTOR

Richborough Estates

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 begins 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 three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.
- 4) The details submitted pursuant to the reserved matters under condition 1 shall broadly be in accordance with the illustrative masterplan (ref EMS.2365.01.H) and section 5 of the Design and Access Statement (October 2014), and each application for reserved matters approval shall incorporate, as far as is relevant to that/those matter(s) and/or phase of development the following requirements:
 - (a) undeveloped areas of green infrastructure adjacent to existing hedgerows and trees and to the watercourse;
 - (b) tree planting within the street scene;
 - (c) detailed scheme(s) in respect of hedges to be replanted or trans-located;
 - (d) details of the ground levels, finished floor levels of the buildings and any retaining works;
 - (e) refuse bin collection points at the entrance to shared private drives, sufficient to accommodate two bins per dwelling served. The approved refuse bin collection points shall be provided before the dwellings to which they relate are occupied and shall be retained thereafter for that use.
 - (f) The road layout shall be designed in accordance with 'Manual for Streets' and include car parking provision of at least 2 spaces per dwelling. The spaces shall be provided before the dwelling(s) to which they relate are occupied and shall thereafter be retained for that purpose.
 - (g) A swept path analysis shall be submitted to demonstrate that service and emergency vehicles can successfully enter and manoeuvre within the site; and
 - (h) a detailed scheme for provision of a locally equipped area for play (LEAP).
- 5) No hedgerow, shrub or scrub shall be removed between 1 March and 31 August unless a survey for any nesting bird(s) has been undertaken by a competent ecologist and the results of the survey together with proposals for hedgerow, shrub or scrub removal have been submitted to and approved in writing by the local planning authority.
- 6) No development shall take place within the River Trent/Dale Brook flood plain as identified in the Flood Risk Assessment Ref 2013/1199 Rev A.

Finished floor levels of all residential buildings shall be set at a minimum of 600mm above the 1 in 100 year plus climate change flood level.

- 7) No site clearance, ground works or development shall take place until a scheme for the protection of hedgerows and trees has been submitted to and approved in writing by the local planning authority. The approved measures shall be carried out before any equipment, machinery or materials are brought onto the site and shall be maintained until all equipment, machinery and materials have been removed from the site.
- 8) No site clearance, ground works or development shall take place until a scheme of mitigation and enhancement for the protection of Barn Owls has been submitted to and approved in writing by the local planning authority. Development shall take place in accordance with the approved scheme.
- 9) No development shall take place, including any works of demolition, until a Construction Method Statement has been submitted to, and approved in writing by, the local planning authority. The approved Statement shall be adhered to throughout the construction period. The Statement shall provide for:
 - i) storage of plant and materials used in constructing the development
 - ii) site accommodation
 - iii) loading and unloading of plant and materials
 - iv) the parking of vehicles of site operatives and visitors
 - v) routes for construction traffic
 - vi) hours of operation
 - vii) details of vehicle wheel cleaning facilities which shall be provided and retained during the ground works and construction periods; and
 - viii) pedestrian and cyclist protection and any proposed temporary traffic restrictions.
- 10) No development shall take place until a site investigation of the nature and extent of contamination has been carried out in accordance with a methodology which has previously been submitted to and approved in writing by the local planning authority. The results of the site investigation shall be made available to the local planning authority before any development begins. If any contamination is found during the site investigation, a report specifying the measures to be taken to remediate the site to render it suitable for the development hereby permitted shall be submitted to and approved in writing by the local planning authority. The site shall be remediated in accordance with the approved measures before development begins.

If, during the course of development, any contamination is found which has not been identified in the site investigation, additional measures for the remediation of this source of contamination shall be submitted to and approved in writing by the local planning authority. The remediation of the site shall incorporate the approved additional measures.
- 11) No development shall take place until the detailed design of a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development has been submitted to and approved in

writing by the local planning authority. The scheme shall demonstrate that the surface water run-off generated up to and including the 1 in 100 year plus 30% critical rain storm will not exceed the run-off from the undeveloped site following the corresponding rainfall event. The scheme shall be designed in accordance with Defra's non-statutory technical standards for sustainable drainage systems (or any subsequent version) and shall include all necessary measures for attenuation storage, highway drainage and outfall arrangements, and details of the management and maintenance of the system for the lifetime of the development. Development shall take place in accordance with the approved scheme.

- 12) No development shall take place until a scheme for the disposal of foul drainage has been submitted to and approved in writing by the local planning authority. Development shall take place in accordance with the approved scheme.
- 13) Before any dwelling is occupied a Habitat Management Plan for all retained and created habitats including measures for enhancement, management responsibilities and the time scale for implementation shall be submitted to and approved in writing by the local planning authority. The Habitat Management Plan shall be implemented in accordance with the approved details.
- 14) Before any dwelling is occupied the new road junction and pedestrian facilities on both sides of Newton Road shall be constructed in accordance with plan Ref NTT/2204/007 Rev P1. The road shall be constructed to at least base level with a minimum width of 5.5m and 10m radius kerbs. Visibility splays of 2.4m x 128m in both directions shall be provided within which there shall be no obstruction exceeding 600mm in height. The gradient of the access shall not exceed 1 in 30 for the first 10m into the site from the highway boundary. The footways shall be provided as shown on plan Ref NTT/2204/007 Rev P1 to a width of 2m.
- 15) The approved Travel Plan (Ref NTT2204TP dated 7 October 2014) shall be implemented in accordance with the targets, measures, incentives and monitoring measures as specified therein.
- 16) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the first occupation of the dwellings or the completion of the development, whichever is the sooner; and any plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Jack Smyth, of Counsel

He called

Ian Grimshaw MRTPI CMLI

Director of The Environment
Partnership Ltd

Chris Nash MRTPI

Principal Area Planning Officer, South
Derbyshire District Council

FOR THE APPELLANTS:

Hugh Richards, of Counsel

He called

Jeremy Peachey BSc (Hons) M.LD CMLI

Landscape Design Director, Pegasus
Group

Michael Downes MRTPI

Director, Aspbury Planning Ltd

INTERESTED PERSON:

Bryan Wolsey Dip TP

Dip Arch. Cons MRTPI

on behalf of the Bladon Fields
Residents Group

DOCUMENTS SUBMITTED AT THE INQUIRY

Submitted by the Council

- 1) List of suggested conditions
- 2) E-mail from Mr Nash to Mr Galij 8 February 2016
- 3) Responses from consultees on the planning application
- 4) Closing submissions on behalf of the Council

Submitted by the Appellant

- 5) Opening statement on behalf of the appellant
- 6) Unilateral Undertaking
- 7) Closing submissions on behalf of the appellant

Submitted by Mr Wolsey

- 8) Submissions on behalf of the Bladon Fields Residents Group